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062
No. 2576

United States
Circuit Court of Appeals
For the Ninth Circuit.

Transcript of Record.

JAMES B. SMITH, F. C. MILLS and E. H.
MAYER,

Plaintiffs in Error,

vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

VOLUME VII.

(Pages 2305 to 2670, Inclusive.)

Upon Writ of Error to the United States District Court of the
Northern District of California, First Division.

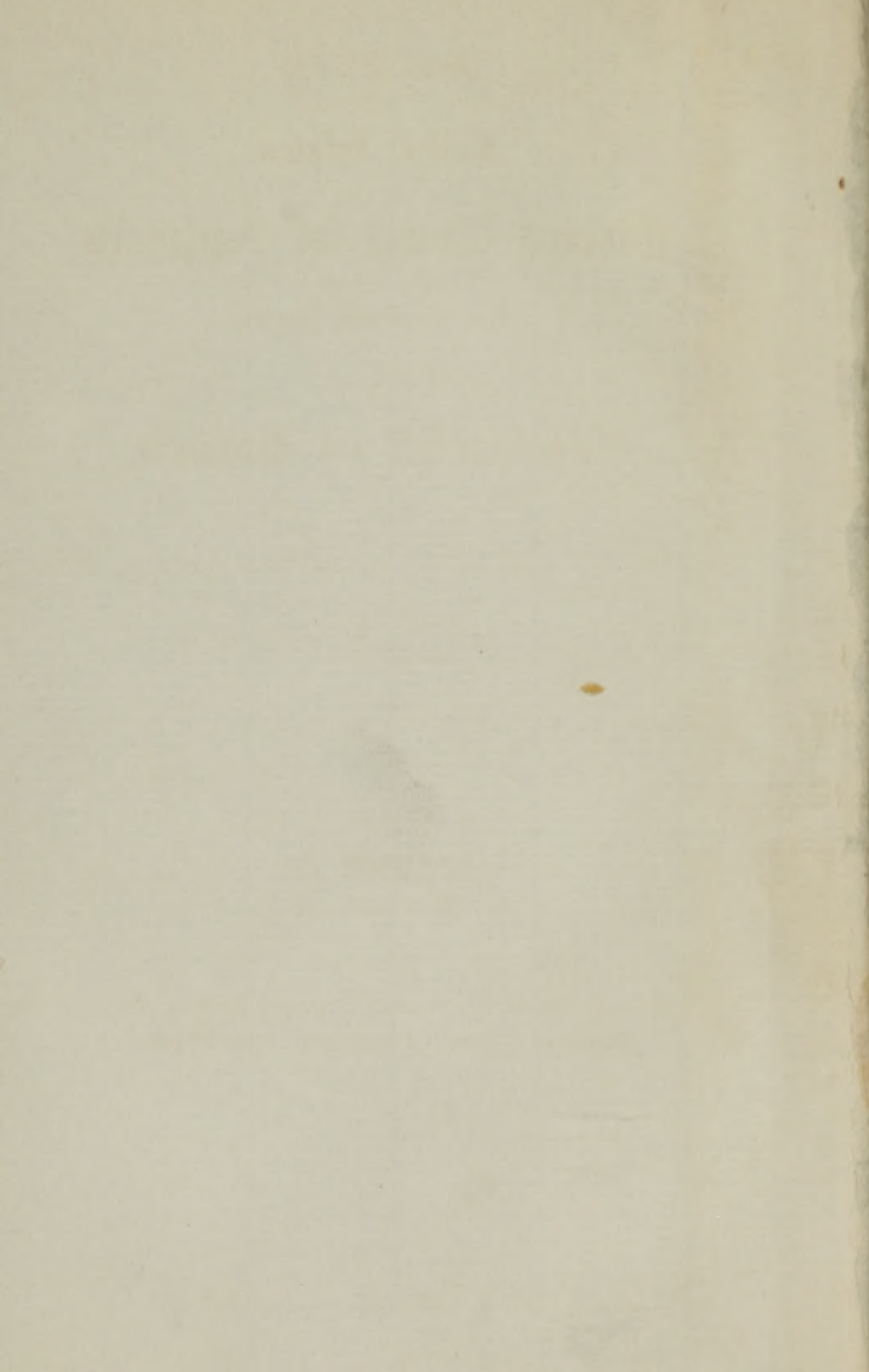
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Upon Writ of Error to the United States District Court of the
Northern District of California, First Division.

[Title of Court and Cause.]

State of California,

County of Alameda,—ss.

Affidavit [of Joseph Stackler, Dated March 3, 1914].

Joseph Stackler, being first duly sworn deposes and says: I was one of the jurors on the trial of the above-entitled case.

I am a regular reader and subscriber to the San Francisco "Examiner," and during the time of the trial, I read the accounts and items appearing in it, concerning the case. In fact, I laid them aside in my home in order to keep them, and I still have nearly all the issues of the "Examiner" containing accounts of the trial in my home.

I read the *editorials* in the "Examiner" of December 17th, 1913, entitled: "Coal Shipments and Atmosphere," and of February 11th, 1914, entitled: "He Earned The Money," but I do not remember reading the editorial of December 18th, 1913.

JOSEPH J. STACKER.

Subscribed and sworn to before me this 3d day of
March, 1914.

[Seal]

F. H. BARTLETT,

Notary Public in and for the County of Alameda,
State of California.

(The accounts and items referred to in the above affidavit and the editorials referred to in and annexed thereto are set out at length in that certain affidavit of Elliott Johnson, *infra*, relating to the San Francisco "Examiner.") [2036—1968]

[Title of Court and Cause.]
State and Northern District of California,
County of Alameda,—ss.

[Affidavit of Joseph Stackler, Dated March 8, 1914.]

Joseph Stackler, being first duly sworn, deposes and says: A week or more before the close of the trial of the above-entitled case, a group of the jurors were standing in the hallway outside the door of the courtroom discussing the case on trial and the sugar case back East. It was shortly before 2 o'clock in the afternoon that this discussion took place, and Mr. Maher, another of the jurors, did most of the talking according to my recollection.

I do not remember the exact words used, but the substance of them was that the Sugar Company and the Western Fuel Company were big corporations, and that all these big corporations did business along the same lines, and that all of them gave commissions or contributions, and that the Sugar Case was a similar case, only one company was handling sugar and the other coal.

My recollection is that Mr. Bollander was also present and did some of the talking, but the chief speaker was Mr. Maher, and I think that Mr. Becker was also present, but I did not see the article in the "Tribune" and I do not think it was being shown to the jurors at that time.

JOSEPH STACKLER.

Subscribed and sworn to before me this 8th day of March, 1914.

[Seal]

HENRY G. TARDY,
Notary Public in and for the County of Alameda,
State of California. [2037—1969]

[Title of Court and Cause.]

County of Alameda,
State of California,—ss.

**[Affidavit of Joseph Stackler, Dated February 27,
1914.]**

Joseph Stackler, being first duly sworn, deposes and says: I was one of the jurors on the trial of the above-entitled case.

I read the editorials in the San Francisco "Examiner" upon the date of the issues in which they were contained, these editorials appearing in the "Examiner" of December 17th and February 11th (1913 and 1914). The editorials read by me were headed "Coal Shipments and Atmosphere" and "He Earned The Money," and they are attached to this affidavit.

JOSEPH STACKLER.

Subscribed and sworn to before me this 27th day of February, 1914.

[Seal]

HENRY G. TARDY,
Notary Public in and for the County of Alameda.

(The editorials referred to and which were annexed to the above affidavit are set out at length in that certain affidavit of Elliott Johnson, *infra*, relating to the San Francisco "Examiner.") [2038—1970]

[Title of Court and Cause.]

State and Northern District of California,

County of Santa Clara,—ss.

[**Affidavit of William K. Beans, Dated March 6, 1914.**]

William K. Beans, being first duly sworn, deposes and says:

That he was one of the jurors impaneled to try the above-entitled cause.

That about ten days prior to the time when said cause was finally submitted to the jury for its verdict Fred Becker, another one of the jurors who tried the above cause, handed to affiant to read a newspaper article referring to, or containing, a series of articles distinctly hostile to the defendants herein, commenting at some length in a manner adverse to their defense herein, and likening this case to the American Sugar Refining Company case in New York in which some of that company's officers or employees had been convicted for false weighing. Said Becker had previously given these articles to several other of said jurors to read, and some of them had read the same, and said Becker told affiant at the time of handing him said articles as aforesaid that he ought to read them. Affiant merely glanced at said articles observing their character, and on the following morning returned them to said Becker without further reading them. Affiant is not able at this time to state in what paper said article or articles were published, nor can affiant repeat the language thereof. About said time Thomas C. Maher,

another of said jurors, told affiant that this case was similar to said American Sugar Refining Company case.

That affiant during the trial hereof read the articles [2039—1971] then appearing in the San Francisco “Examiner” regarding this case.

That said Becker told affiant at the time said newspaper article was handed affiant what were the contents of said article, that it referred to the sugar frauds, saying that the sugar people were crooked, and that the Western Fuel people were operating along the same lines.

That the article hereinabove referred to was lengthy and was partly printed in type larger than that ordinarily used in newspapers, and was contained on the front page and according to affiant’s recollection also on a subsequent page of said newspaper.

WILLIAM K. BEANS.

Subscribed and sworn this 6th day of March, 1914, before me.

W. F. HENNING,
Notary Public in and for the County of Santa Clara,
State of California.

(The “articles then appearing in the San Francisco ‘Examiner’ regarding this case” are set out at length in that certain affidavit of Elliott Johnson, *infra*, relating to said San Francisco “Examiner.”)
[2040—1972]

[Title of Court and Cause.]

Affidavit of Elliott Johnson.

State of California,

City and County of San Francisco,—ss.

Affidavit of Elliott Johnson [Dated March 5, 1914].

Elliott Johnson, being first duly sworn, deposes and says: That attached hereto are articles, items and editorials printed in the San Francisco "Examiner," a daily newspaper published in the City and County of San Francisco, during the course of the trial of the above-entitled cause.

ELLIOTT JOHNSON.

Subscribed and sworn to before me this 5th day of March, 1914.

[Seal]

C. B. SESSIONS,

Notary Public in and for the City and County of
San Francisco, State of California. [2041—
1973]

**[Newspaper Clippings Referred to in Affidavits in
Support of Motions for New Trial.]**

**[Newspaper Clipping from] "Examiner," December
9, 1913.**

WESTERN FUEL TRIALS TO-DAY.

Eight Officers and Employees of Company to Face
Charges of Conspiracy to Defraud.

Eight officers of the Western Fuel Company, indicted by the federal grand jury for criminal conspiracy to defraud the United States of customs dues and full weight on imported coal, will be tried jointly to-day in the United States District Court before

Federal Judge Maurice T. Dooling. The defendants are :

JOHN L. HOWARD, president.

JAMES B. SMITH, manager and director.

J. L. SCHMIDT, treasurer and director.

ROBERT BRUCE, director.

SIDNEY V. SMITH, director.

FREDERICK C. MILLS, superintendent.

E. H. MAYER, weigher.

EDWARD J. SMITH, weigher and former tax collector of San Francisco, who served a term in the penitentiary for embezzlement.

This is the case which attracted nation-wide interest when John L. McNab, former United States Attorney, resigned, claiming that the Western Fuel Company officials had reached high federal administration men at Washington and worked out a tentative plan to block the case.

The case will be presented to-day by Theodore J. Roche and Matt I. Sullivan, special federal prosecutors. The defendants have an imposing array of counsel—E. J. McCutcheon, Warren Olney, Jr., Stanley Moore and Samuel Knight. Both sides said last night that they were ready to proceed without delay.

The government hopes to prove that on all coal imported it received less than the rightful customs dues on account of an elaborate system of short weights; that it was cheated in deliveries of coal to the army transport service and that, in order to carry out these alleged frauds, the engineers of the Toyo Kisen Kaisha (the Japanese trans-Pacific line) and the Pacific Mail Steamship Company were bribed on the

basis of 21½ cents a ton to wink at short weight fuel consignments from the Western Fuel Company.
[2042—1974]

[Newspaper Clipping from] “**Examiner**,” December 10, 1913.

JURY IS PARTLY CHOSEN TO TRY WEST-ERN FUEL.

Battery of High-Priced Lawyers Spends Day Examining Many Talesmen.

12 Temporarily Selected.

Panel of Men to Try Coal Fraud Case Will Probably Be Filled To-day.

Twelve jurors sat in the box last evening after the Western Fuel Company conspiracy cases, involving gigantic coal frauds against Uncle Sam, had been started in the United States District Court.

One tentatively selected juror, John H. Masterson, was notified that the defense in the coal conspiracy trial expects to use a peremptory challenge on him to-day at 2 o'clock, when the case is resumed.

The jurors, who have been temporarily passed and who will be in the box when court convenes to-day, are the following:

Martin O'Connell, retired foundry-man, whose place of business was formerly in Steuart street and at North Beach.

R. E. Herdman, agent to the Penn Mutual Life Insurance Company, living at Palo Alto.

A. Christianson, manager for the local office of Wells Fargo & Company, whose address is 637A Castro street, San Francisco.

C. A. Doss, contractor and builder, who lives at 2028 East Fifteenth street, Oakland.

Fred Becker, butcher, living and conducting his business in Oakland.

Charles R. Nauert, retired foundry-man, living at Alvarado.

Thomas C. Maher, promoter and dealer in patent appliances, living at 3549 Twenty-third street, San Francisco.

Charles G. McIntosh, vice-president of the Bank of California, living at Woodside, San Mateo county.

William F. Murray, a member of the firm of Murray Brothers, machine works, and living at 908 Guerrero street, San Francisco.

William Beans, a San Jose banker, living in the Garden City.

B. C. Allen, hardware company secretary, living at 669 Twenty-seventh street, Oakland.

John H. Masterson, president of the San Francisco Lumber Company, and living at Belvedere, Marin county.

Imposing Array of Lawyers.

Counsel for the Government and for the defendants kept up a running fight yesterday, trying to keep men on and off the jury. And it was an imposing array of lawyers pitted against each other in the initial skirmish in a battle which means either acquittal or disgrace and possibly the penitentiary for eight officials of the Western Fuel Company.

For the United States there sat at the table yesterday not only Special Federal Prosecutors Theodore J. Roach and Matthew I. Sullivan but also Deputy

United States Attorneys Thomas Selvage and Earl Pier. For the Western Fuel Company there were not only Attorneys Samuel Knight, E. J. McCutcheon, Warren Olney Jr., Stanley Moore and A. P. Black, former Assistant United States Attorney, but also Peter F. Dunne, once one of the Southern Pacific's best legal lights.

Challenged for Prejudice.

The Government's counsel found fault with the opinion of a number of veniremen yesterday and challenged them for prejudice. Among those thus excused by Judge Dooling were George Boyd of San Rafael, Robert G. Hooker of Hooker & Lent, real estate brokers; Ernest R. Folger, first vice-president of the J. A. Folger Company; A. S. Ferguson, salesman for the Ferguson-Moore Company; E. H. Tryon, who became famous when he went East to the Republican Convention as a Taft delegate; Thomas A. Burns, broker, living at 2505 Devisadero street; George T. Page, ship broker, living at San Rafael, and John Reid, father-in-law of Mayor Rolph.

After this picking and plucking had taken place the Government exercised one of its six peremptory challenges in the case of John T. Gilmartin, manager for the H. S. Crocker Company. The defense reduced the jury box, too, by removing George J. Gallagher, who runs a plumbing and general merchandise business in the Mission. The defense has still nine peremptories. [2043—1975]

[Newspaper Clipping from] "**Examiner**," December
13, 1913.

JURY READY TO TRY FUEL CONSPIRACY.
Panel Filled After Challenges Had Been Exhausted
by Both Sides; Many Talesmen Quizzed.

Judge to Rush Hearing.

Eight Officials of Western Co. Will Listen to Outline
of U. S. Case Monday Morning.

Western Fuel Jury Chosen.

These Men Will Try Case.

These are the twelve men who will try the officers
of the Western Fuel Company:

R. E. HERDMAN, soliciting agent of the Penn Mu-
tual Life Insurance Company, Palo Alto.

FRED BECKER, butcher, Oakland.

THOMAS C. MAHER, patent appliance promoter
San Francisco.

WILLIAM K. BEANS, banker, San Jose.

B. G. ALLEN, hardware merchant, Oakland.

L. P. BOLANDER, millwright, San Francisco.

R. H. GATLEY, apartment house proprietor, San
Francisco.

JOHN H. BROMBERGER, musician, Alameda.

J. W. BOCKMAN, hardware merchant, San Fran-
cisco.

JOSEPH STACKLER, blacksmith, Alameda.

P. W. TREACY, paint merchant, Oakland.

WILLIAM LONG, butcher, Oakland.

The jury which will try the Western Fuel Com-
pany conspiracy cases was selected in the United

States District Court yesterday. Adjournment was taken until Monday at 10 o'clock, when the government will make its opening statement.

Court convened with forty special veniremen in the courtroom, summoned in twenty-four hours by Marshal Elliot when the regular panel was exhausted last Wednesday. In the examination of the talesmen both sides exhausted their challenges.

John H. Bromberger, a musician, living at 1620 Bay street, Alameda, won a place on the jury and escaped without a challenge, despite the fact that his brother-in-law, T. G. Daniels, holds the federal post of Land Register.

George W. Hunt, a salesman for W. W. Montague and a resident of Oakland at 1028 Fifty-ninth street, admitted, after a lengthy questioning, that he had a "suspicion" that the defendants were guilty. The court excused him.

Joseph Court, a shoe dealer of 1327 Peralto street, Oakland, and H. L. Young, a real estate man, living at 724 Page street in this city, both passed examination, but lost their places in the box through peremptory challenges by the defense.

J. W. Bockman of 541 Haight street, a hardware merchant, suited both sides, as did Joseph Stackler, a blacksmith, living at 1721 Buena Vista avenue, Alameda; P. W. Treacy, a paint merchant and paper hanger of 827 Peralta street, Oakland, and William Long, an Oakland butcher of 1160 Eighth street.

Of the jurors who had lasted over from Wednesday, the Government peremptorily challenged J. M. Taft, the young Oakland dry goods merchant, while

the defense used two peremptories on F. H. Babb, San Jose orchardist, and Martin O'Connell, retired foundryman of this city.

Judge Dooling proposes, in so far as he can do so without hardship to those attendant on the case, to rush the trial. He announced yesterday that sessions would be held five days in the week, including Monday, and that the hours would be from 10 to 12 in the morning and from 2 to 4 in the afternoon.
[2044—1976]

[Newspaper Clipping from] "**Examiner**," December 15, 1913.

TESTIMONY BEGINS IN WESTERN FUEL TRIAL.

Company's Books to Confront Eight Indicted Officials.

The taking of testimony in the trial of the Western Fuel Company conspiracy cases will begin at 10 o'clock this morning in the United States District Court before Judge Dooling.

Special Prosecutors Theodore J. Roche and Matthew I. Sullivan are ready to lay before the jury evidence tending to show that the eight indicted officers of the coal company connived in perpetuating a system of short-weighting, thereby obtaining "drawbacks" on import duties paid to the Government.

After Prosecutor Sullivan has outlined his case to the jury, the books of the company will be introduced and, with the assistance of Secretary David R. Norcross of the fuel company, a foundation will be laid for the further introduction of evidence.

The Western Fuel Company's line of defense, it is understood, will be not only the impeachment of the Government's witnesses, but the assertion that the alleged short weights found in shipments were due to the evaporation of water-soaked coal.
[2045—1977]

[Newspaper Clipping from] "**Examiner**," December
16, 1913.

NOVEL MOVE BY DEFENSE IN FUEL CASE.

Surprise for Prosecution Comes in Demand
to Outline Case When Government
Ends Statement.

Answer Charges in Detail.

Scientific and Climatic Reasons are Given
to Explain Change in Weight of
the Same Coal.

The defense in the Western Fuel Company Conspiracy trial sprang a surprise in the United States District Court yesterday morning, when, after Matt I. Sullivan, special prosecutor, had concluded the opening statement for the Government, Attorney Warren Olney, Jr., asked and was given the privilege of making the opening statement for the defendants.

This generally is made only after the prosecution has introduced all its evidence. Olney declared that his clients had been "waiting for months to get their evidence before a fair tribunal," and he was anxious that the jury would have an opportunity to judge all the evidence on the basis of the two opposing explanations.

Olney's chief point was the moisture content of

coal—the declaration that a ton could bulge when watered. This, it was impressed upon the jury, will be one of the bulwarks of the defense—an explanation of why bill of lading weights to this point and barge weights for outgoing vessels differed from the United States Customs weights, thus causing the discrepancies which resulted in the alleged loss of duties to Uncle Sam.

Coal Loses Weight.

“The Government has charged the Western Fuel Company with short-weighting it on foreign coal entering this port,” said Olney, answering Sullivan’s statement. “But we are prepared to show by the testimony of the Government’s own scientists that freshly mined coal, brought under hatches to this port, will lose weight so that the delivery weight will show a disappearance of 1 per cent in the total bulk. The Volatile elements in the coal vanish, causing this loss.

Olney named a list of Federal experts who, he said, would be summoned as witnesses if the prosecution refused to put them on the stand.

“The Western Fuel Company,” said Olney, “did give \$125 each to the Pacific Mail Company employees. Coal was given to others. These were just gratuities, and the thing was nothing worse than is practiced by nearly every business firm in this city.

“Tips” to Help Service.

“The payments to the Japanese steamship employees is not in the same category. We found that they expected “tips,” and we gave the engineers first five cents and then two and one-half cents on every

ton put on their vessels. The engineer divided with the rest of the crew.

Answering the statement of Prosecutor Sullivan that there had been crookedness in the loading of the coal bunkers through the manipulation of the scales on the wharves, Olney said that the coal was constantly under the eye of the customs weigher, loaded under his supervision and according to the rules of the Government.

“Coal is not so valuable,” observed Olney, “and the duty is light. Hence there is no necessity of carefully weighing every bucket. One bucket out of sixteen is picked, and it is weighed on a ‘rising beam,’ so that, in its very nature, it is a light weight.”

Coal Statistics Given.

The defense combated the statement of the prosecution that hundreds of thousands of dollars were involved in this alleged conspiracy by explaining that in the years from January, 1906, to December, 1912, the total amount of fuel brought into this port and placed on the customs scales was 2,127,843 tons, while the total sales were 2,189,665 tons, showing that the concern had actually sold 61,822 tons more than it had received—that is, the “overrun” had been that great.

“That,” said Olney, “is 2.8 per cent—actually more than the Government alleges. Barge shipments amounted to 751,000 tons, of which 418,000 tons went to the Pacific Mail Company. The ‘average’ was 35,999 tons, figured to be 4.8 per cent. The coal on which ‘drawback’ duties were asked amounted to 20,720 tons.

WHAT GOVERNMENT CHARGES.

ANSWERS BY WESTERN FUEL.

Here are some of the charges, made by the Government, and the explanations, made by the Western Fuel Company:

ACCUSATION—Coal entering this port, was underweight, the Government losing duties thereby.

ANSWER—True, it was wet coal, freshly mined, and there was evaporation on the way to this port.

ACCUSATION—Coal, leaving this port, was overweight, the Government being charged for “draw-backs” from the original duty paid.

ANSWER—Yes, the humidity at the port of San Francisco caused moisture in the coal and so raised its weight.

ACCUSATION—The coal was falsely weighed through connivance of Western Fuel Company and steamship company officials.

ANSWER—The duty on coal was light, and, so, the weighing of coal was not done carefully. It was a “light weight” on a “rising beam.”

ACCUSATION—The Western Fuel Company bribed steamship employees to wink at the short weights of coal on their vessels.

ANSWER—Those payments were only “tips”—just as anybody would give a gratuity to a waiter to get satisfactory treatment. [2046—1978]

[Newspaper Clipping from] "**Examiner**," December
17, 1913.

**SECRETS OF COAL TRUST OFFERED AS
VENGEANCE.**

David Powers, U. S. Witness, is Arrested on Charge
of Girl; Brother, Once Company Em-
ployee Says He Will Tell All.

Had Held Back Before Grand Jury, but Now, In-
censed, He Declares That He Will Take
Stand Against Western Fuel.

Inquisitorial Body Investigating Suspicion That
Arrest was Caused to Throw Discredit
on Testimony Taken Against
Corporation.

David G. Powers, one of the chief witnesses for the Government in the Western Fuel Company conspiracy trial, was arrested yesterday on a charge of statutory offense against Lena Caduff, a twenty-year-old girl. Edwin A. Powers, his brother, convinced immediately that the defense had arranged a plot to discredit him, announced forthwith that he was now ready to go on the witness-stand and tell unreservedly all that he knew about the coal frauds, which he, as former assistant superintendent of the fuel concern, was in a position to have seen.

Edwin Powers' decision to throw the weight of his testimony in favor of the prosecution fell as a thunderbolt in the camp of the defense, which had been relying all along on his refusal to join his brother, David, and turn informer. Edwin had been

a reluctant and unsatisfactory witness for the prosecution before the Grand Jury.

The defense is said to have relied on this and to be secretly laughing at the inability of the Government to get his whole-hearted support.

Will Tell All the Truth.

"I shall tell all the truth now in this trial," said Edwin Powers last night. "I don't believe in 'snitching,' but this trick puts a different complexion on the case. Blood is thicker than water. My brother is being made the victim of a contemptible 'frame-up,' and there's just enough Irish in me to make me fight.

"I didn't approve of my brother's course in turning informer. In fact, this caused a sharp division in the family. He went his way and I went mine. Frankly, I didn't intend to take the stand he did in this case, and I probably wouldn't have if this new angle in the case hadn't forced me. Now I shall testify of everything I know about the coal frauds; and when I get off the witness-stand there will be little doubt about what the coal company did to cheat the Government."

Edwin Powers, it is generally conceded, will make a stronger witness for the Government than his brother, David. He was assistant superintendent for the Western Fuel Company for five years from 1906 to 1911, in charge of the barge-loading and barge-discharging department under F. C. Mills. He also had charge of Mills' books, and hundreds of the entries, recording "overruns" and underweights, are in his handwriting.

Close to High Officials.

Edwin Powers had close personal relations during this time with several of the coal company officials now under indictment. He received personal orders from these officials and transmitted others, all having a direct bearing on the conspiracy charge, now being tried in the United States District Court.

The Government prosecutors are confident that, with Edwin Powers' testimony, they will be able to forge an unbreakable link between the operating end of the coal company and the main office. The company has admitted that there were "overruns," that the coal, when weighed, showed startling discrepancies with the Customs weights, and this is all borne out in the books.

Powers' story will contradict the claims made by the defense, that the discrepancies were the result of "evaporation," of "moisture content" and of unavoidable carelessness in handling the scales.

More Than One Effect.

The arrest of Powers yesterday had more than one effect. Besides bringing Edwin Powers into line *with* [2047—1979]

COAL SHIPMENTS AND ATMOSPHERE.

Marvelous, indeed, are the works of nature. Consider, now, what happened to the Western Fuel Company, as related by counsel to the judge and jury in the United States District Court Monday morning.

The Western Fuel Company, as the "The Examiner's" readers know, is on trial, charged with cheating the government by short-weighing coal. The government offers in evidence records to show

that the coal weighed into this port was many pounds short of the weight attributed to the same coal when the corporation sold it to ships. The total discrepancy of weights amounts to about 70,000 tons, the duty on which is something of an item, even to your Uncle Samuel.

And now comes Attorney Warren Olney and makes explanations. It seems that on its way to this port from the mines, the coal shrinks in weight, owing to evaporation of moisture, and, on the other hand, after it has been weighed in here and the duties paid, the coal again takes on weight by absorbing an even greater amount of moisture from the humidity of San Francisco's climate.

We regard this nice adjustment of atmosphere conditions to balance the unfortunate discrepancies in the Western Fuel Company's accounts as one of the greatest triumphs yet achieved in the science of meteorology. To be sure, several rude, unlettered personages employed around the waterfront are ready to swear that the weight was added to the coal by moisture directed through a liberal hose, but true science cannot stop to investigate such trivial and non-essential statements.

What we do know is that by a remarkable adaptation of coal shipments to atmospheric conditions the Western Fuel Company's experts have long been able, secretly, to make three tons of coal grow where there were but two tons before.

And that is glory enough for one corporation devoted to scientific pursuits. [2048—1980]

[Newspaper Clipping from] "**Examiner**," December
18, 1913.

SCIENTIFIC DISCOVERY RUINED BY CUPID.

Cherez la femme! With the assistance of Miss Lena Caduff, ably abetted by counsel for the defense, the Government is in a fair way to land some of the scientific manipulators of weights, measures and moisture in jail.

David Powers, the chief Government witness against the Western Fuel Company's officers, was suddenly arrested on a statutory charge preferred by Miss Caduff, who is twenty years of age and, of course, too young to know what she was doing. The law says so, anyhow, so it must be so.

Angered by his brother's arrest, Edwin Power vows he will tell all he knows about the short coal-weighing practices of the defendants. Mr. Power, we regret to say, vigorously and even profanely scoffs at the defendants' explanation of the automatic expansion and contraction of coal under varying conditions of atmospheric humidity. Mr. Power intimates that he will swear that the phenomena were produced by juggling the weighing machines.

Thus is another scientific discovery, which promised to revolutionize industry, knocked into a cocked hat by rude and passionate opposition. No longer can the world congratulate itself that two tons of coal can be obtained by leaving one ton exposed to a heavy fog.

And to think that the visible coal supply might have continued to be doubled by the inexpensive pro-

cess of leaving it out over night if Miss Lena Caduff had only been a year older when she met the susceptible Mr. Power! [2049—1981]

Coal Profit Loss Mourned.

Western Fuel Report Tells of Heartache When
“Double Rate” Isn’t Secured.

The Western Fuel Company conspiracy charge trial in the United States District Court was enlivened yesterday by the statement, quoted from President John L. Howard in his annual report of December, 1906, that the fire created “heartache” in the firm because the temporary shortage of coal, caused by the demoralized conditions at the port of San Francisco, prevented that firm charging “double the rates” to consumers, who would have been glad to have secured fuel at those exorbitant charges.

Secretary David C. Norcross of the Western Fuel Company identified the records of the company introduced as evidence. In the annual statement made by President John L. Howard to the Western Fuel Company directors on December 31, 1906, the year of the fire, appears this statement, according to Secretary Norcross:

Output is Compared.

“A mine output of 1,500 tons per day which, at other periods, was comfortable, became at once *quiet* inadequate, and the steamship trade, which ordinarily would have been welcome, caused temporary heartache, because it diverted coal from customers who would have paid us double the rates per ton.”

Hugh G. Edwards, United States customs inspector at Seattle, testified that average cars of five tons

of coal weighed only from five to ten pounds per car overweight.

David G. Powers, brother of Edwin A. Powers, and one of the most important witnesses in the present Western Fuel Company conspiracy case, appeared before Police Judge Crist yesterday to answer to the statutory charge on which he was arrested the day before on complaint of Lena Caduff. The lawyers for the prosecution, Bradley Wallace and Jerome Politzer, made no appearance neither did the complaining witnesses.

Asks Lower Bonds.

Edward I. Berry, connected with the law firm of Sullivan, Sullivan & Roche, asked that the bonds be reduced from \$5,000 to \$2,000 for the reason that Powers was an important witness for the government in the Western Fuel cases.

Judge Crist reduced the bond, which had been furnished by Matt I Sullivan and Theodore Roche, special prosecutors for the government in the coal frauds trial. Powers was released and the case was continued until December 24. [2050—1982]

[Newspaper Clipping from] "**Examiner**," December 19, 1913.

NORCROSS TELLS OF BIG PROFITS.

Western Fuel Co.'s Secretary Says it Made a Million Dollars in Last Nine Years.

That one million dollars' profit, in monthly installments of 2½ per cent, were made by the Western Fuel Company in the last nine years was the statement made by Secretary David C. Norcross yesterday in the trial of the eight indicted coal

officials for conspiracy before Judge Dooling in the United States District Court.

In 1912, Norcross testified, the dividends increased to 17 per cent.

Norcross found difficulty in remembering the names of the members of the Western Fuel Company's executive committee, which handled the intimate details of the corporation's profit-making.

Norcross admitted that there was such a body, and named Robert Bruce, one of the indicted directors, as one of its members. Bruce is a vestryman in Trinity Church. His son-in-law, the Rev Clifton Macon of Oakland, was in court watching the proceedings.

It is expected that the Powers brothers, Edwin and David, the star witnesses for the prosecution, will take the stand to-day. Possibly they will be preceded by Special Treasury Agent W. H. Tidwell. The next man scheduled to take the stand is William Bunker, former chief engineer on the Pacific Mail's liner Manchuria, who will tell how the coal company repeatedly short-loaded that vessel when he was in charge. [2051—1983]

[Newspaper Clipping from] "**Examiner,**" December 20, 1913.

RAPS WESTERN FUEL LAWYERS.

Persistent Attempts to Get Statements on Shortages
Call for Court Sarcasm.

Persistent attempts on the part of the lawyers for the defense in the Western Fuel Company conspiracy trial yesterday to get into the record some admission from Special Prosecutor Roche and from

Special Treasury Agent W. H. Tidwell, on the witness stand, that the shortages in coal shipments for six years amounted to only nine-tenths of 1 per cent, caused Federal Judge Dooling to rebuke the attorneys.

"If counsel insists on repeating this statement," said he, "the court will appoint one lawyer to do the repeating."

This shaft of sarcasm came after the attorneys on opposing sides had indulged in a sharp exchange over Tidwell's testimony, the defense insisting that he talk in terms of percentages while the prosecution contended that the figures were eloquent enough.

Tidwell's testimony came late in the afternoon and consisted of a resume of his work in investigating the alleged coal frauds, in tabulating the amount of coal received and disposed of between April, 1906, and December, 1912.

Secretary David C. Norcross of the Western Fuel Company concluded his testimony, the final tilt over him being marked by Prosecutor Roche's jeer at the defense that the coal concern, in the course of its activities, had "charged for the storage of water" in a shipment of smelting coal from the Cumberland Coal Company. This was a fling at the argument of the defense that the moisture content of coal caused large fluctuations in its tonnage. [2052—1984]

[Newspaper Clipping from] "**Examiner**," December 23, 1913.

SHORT WEIGHTS DUE TO HASTE.

Coal Handled Too Fast to Avoid Mistakes, Is Plea of Defense.

That the world moves too fast to get exact weight on coal shipments was the principal fact which the defense vainly strove to establish yesterday on testimony taken at the trial of the eight indicted officials of the Western Fuel Company for alleged customs frauds now being heard before Federal Judge Dooling.

Daniel J. Moynahan, for eighteen years an assistant weigher for the United States Customs Service, was introduced as a witness by the prosecution, but grasping his statement, Stanley Moore, counsel for the defense, worked hard to extract from the witness an admission that the weighing was necessarily done in such a slipshod manner, on account of press of work, that large discrepancies in the weights were inevitable.

Precise Weights Impossible.

"It was impossible to get precisely an exact weight," interjected Attorney Peter F. Dunne for the defense. "The world moves and it has to do business with dispatch."

In the afternoon another attempt was made to prove that speed made exact weights impossible when W. J. Dougherty, government weigher, took the stand. Dougherty was cross-examined by Moore at great length.

Dougherty testified that when the coal was weighed at the Folsom Street wharf he usually sat over the scales and kept count on the coal. There was rarely any mistake, Dougherty stated, and the coal on the cars would not vary twenty pounds either way on the scales. In connection with Moynahan's morning statements, Dougherty pointed out that the bar that showed the weight rose on the scale just two and three-eighths inches, and that in weighing 2,200 pounds the scales were always correct within ten pounds.

Treasury Agent Testifies.

W. J. Tidwell, special agent of the Treasury Department, introduced by the prosecution, was another witness. Tidwell identified several exhibits prepared by his staff of Treasury agents, showing the sales made in the time covered by the case. His figures showed that 2,196,215 tons and 1,847 pounds were disposed of. This meant an "average" of 62,000 tons—the amount of coal sold over the amount actually received by the company, as disclosed by its own records.

Theodore Roche, special Government prosecutor, yesterday said that it would take until January 15 before all the Government's evidence could be presented to the jury. [2053—1985]

[Newspaper Clipping from] "Examiner," December 24, 1913.

724 TONS GREW INTO 1,244 TONS.

**Special Agent Testifies That the Western Fuel
Mulcted Government in Coal Deals.**

William J. Tidwell, special agent of the Treasury

Department, occupied the witness stand all day yesterday at the trial of the eight indicted officials of the Western Fuel Company for alleged customs frauds.

The entire afternoon was taken up by Theodore Roche, special prosecutor, in examining Tidwell on tables he had made from the company's books to illustrate how it benefited by the so-called overages on coal shipments from British Columbia, the overages being the difference between the invoice and the out-turned weight of the shipments.

Specimen cases illustrated included the overage of coal on the barge Comanche October 11, 1911. According to the records of the company, 724 tons of coal were put aboard the Comanche and 1,244 tons were represented as taken off, making an overage of 419 tons, 117 pounds, or 70 per cent upon which drawbacks were paid by the Government.

Considering the fact that these drawbacks amounted to 40 cents a ton for coal put aboard vessels of American register, the Government, according to the prosecution, was mulcted out of thousands of dollars that should have gone into the treasury.

Agent Tidwell quoted other instances of these overages, which went all the way from 6 to 70 per cent of the different shipments handled by the company.

Judge Maurice Dooling announced that the trial would be continued until Monday, January 5.
[2054—1986]

[Newspaper Clipping from] "Examiner," January
6, 1914,

COAL BARONS GENEROUS TO LINER'S MEN.
Western Fuel Gave Cash and Goods to Pacific Mail
Men Each Christmas, Says Witness.
\$50 Was Annual Present.

Marine Superintendent for the Steamship Company
Tells of Shortage Found on Vessels.

The Western Fuel Company, whose officers and employees are now on trial for conspiring to defraud the United States Government out of customs duties and "drawbacks" from those duties, played Santa Claus regularly each Christmas since 1908 to a large number of men in the employ of the Pacific Mail Steamship Company, according to testimony brought from the examination of William Chisholm, marine superintendent for the steamship company, yesterday in the resumption of the case before United States District Judge Maurice T. Dooling.

The "donation account" of the Western Fuel Company, according to Chisholm, included the late Captain Anderson, captain of the watchmen of the Pacific Mail; Captain T. D. E. Wilson, formerly chief stevedore of the Pacific Mail; P. F. McCarthy, treasurer of the Pacific Mail; Stenographer Blake of the office of Chisholm in the Pacific Mail; Chief Engineer Allen of the "Asia"; B. A. Harnett, assistant manager of the Toyo Kisen Kaisha; J. W. Hauxhurst, engineer of the "Asia"; J. J. Creighton, boss stevedore of the Toyo Kisen Kaisha, and Harry O'Dea.

Get Cash and Coal.

Chisholm admitted that, so far as his own relations

were concerned, he regularly received \$50 every Christmas, and in addition all the coal he needed for his own family throughout the year—an amount of fuel which ran from one to several tons every twelve-month. Chisholm admitted that the indictment of the Western Fuel officials did not in the last disturb his holiday gift, the coal company giving him his annual \$50 last Christmas.

Frederick C. Mills, superintendent of the Western Fuel Company and one of the eight men under indictment, was the man, according to Chisholm, who acted as Santa Claus and put his "O. K." on any requisition which the members of the donation list might want to present to the fuel concern.

Chisholm was interrogated in regard to reports which reached him concerning shortages of coal on the Pacific Mail's ocean liners. He admitted that J. S. Hamilton, engineer of the steamship *Siberia*, had made a report of the coal consumption on one voyage, where the log showed 168 tons as the daily fuel, but, according to the report, it was necessary to tack on seven tons extra, because "100 tons of rain water" had been charged to the Pacific Mail Company on his vessel's consignment of coal.

Lawyers Object to Reply.

"As marine superintendent of the Pacific Mail," inquired Special Prosecutor Theodore J. Roche, "you would not see that company charged with 100 tons of rain water, would you?"

The lawyers for the defense objected to the question and fought hard to keep Chisholm from answering it. In the end, "Big Bill" answered the ques-

tion, explaining that the case was "referred to the general manager."

Roche again stirred the lawyers for the defense when he asked Chisholm why, after a formal report on coal shortages had been rendered him in 1908, he had waited until 1911 before making any personal investigation into the methods of handling the coal from bunker to barge.

At this stage of the investigation Chisholm identified the letter which Chief Engineer W. L. Bunker, of the *Manchuria*, sent him, complaining of the shortage of coal on his ship. Chisholm explained that, on this particular voyage of the *Manchuria*, the ship had made an extraordinary record in low coal consumption.

Indirect Reports Shortage.

Asked if he had received other reports of coal shortages, Chisholm had answered that he had received "indirect" reports—or, rather, "insinuations," to that effect.

"David G. Powers," said Chisholm, "came to me after he was released from the Alameda county jail" (and Chisholm repeated the assertion that the chief witness for the Government had served a term in jail) "and he wanted to have me put both himself and his father on the coaling job for the Pacific Mail, claiming that they could save much money for the company. When I put a direct question to him he merely shrugged his shoulders and walked away.

"In the spring," continued Chisholm, "Eddie Powers asked me to put his father back to trimming coal, saying the same thing—that he could save

money for the company.”

Edwin Powers, asked later concerning this statement, denied that he had ever approached Chisholm on such a proposition. Edwin Powers is one of the witnesses who is said to have a wealth of damaging evidence against the Western Fuel Company.

The hearing yesterday concluded with a tedious introduction into the court record of a mass of data—figures covering coal shipments, duty payments, “drawbacks,” and other matters, furnished by David C. Norcross, secretary of the Western Fuel Company, and Special Treasury Agent W. H. Tidwell.
[2055—1987]

[Newspaper Clipping from] “**Examiner**,” January 7, 1914.

‘EXCESS’ COAL PROFIT LARGE.

Special Agent Gives \$500,000 as Difference Between Tonnage Declared and Sold.

In the trial of the eight Western Fuel Company officials yesterday, Special Agent W. H. Tidwell resumed his testimony under the examination of Special Prosecutor Theodore Roche. Tidwell testified that the profits of the coal corporation between 1904 and 1912 were \$500,000 from excess tonnage alone. He further explained that excess tonnage is the difference between that coal on which duty is paid and the coal sold from the coal yards and bunkers.

Tidwell was cross-examined at great length by Attorney Edward J. McCutchen. He testified he first instituted the investigation of the Western Fuel

Company in 1912. He denied he had ever informed Secretary D. C. Norcross of the Western Fuel Company that the investigation on the part of the Government would show that the coal shortage did not exceed 50,000 tons.

He stated that he had ordered that the Western Fuel Company officials should no longer have access to any of the government records at the Customs House after he had been denied the opportunity of further looking at the books of the coal corporation.

The trial will be resumed this morning when it is expected David Powers, a former employee of the Western Fuel Company and later a special agent in the employ of the government, will take the stand.
[2056—1988]

[Newspaper Clipping from] "Examiner," January 8, 1914.

FREE COAL LIST IS LIKE SANTA'S
Donations of Fuel Made to Many Employees of Concerns That Were Patrons.

The Western Fuel Company had a long list of influential Government and other officials who received free coal, according to testimony given at the trial of the eight indicted officers of the company yesterday.

Prosecutor Roche produced the list, which included army, customs and steamship company employees in high positions.

He declared that this free coal list was maintained to keep the recipients knowingly winking at the frauds that are alleged to have been perpetrated in wholesale form by the company.

Had Free Coal Bills.

Here are some of the beneficiaries on the list:

Major Grant, U. S. A., connected with the army transport service; \$30 worth of coal in 1911; \$24 worth in 1912.

E. Farmer, former clerk to Collector Stratton, \$8 worth of coal in 1907.

J. Twigg, government weigher; \$9.50 worth of coal in 1912 and \$4.75 worth in 1913.

H. Freund and D. Finnegan, government weighers.

W. Chisholm, marine superintendent of Pacific Mail Company.

J. W. Hauxhurst, formerly marine superintendent.

P. H. McCarthy, employee in Pacific Mail treasurer's office.

Captain Wilson, formerly with Pacific Mail Company.

J. Crichton and B. A. Harnett, employess of the Toyo Kisen Kaisha.

This list is believed not to be the complete one, which includes the names of several prominent army officers who have had no coal bills to pay. Special Treasury Agent Tidwell, who prepared the list, refused to confirm or deny this feature.

Payments of 21½ Cents a Ton.

The prosecution made a desperate but apparently unsuccessful effort to introduce into the record vouchers from engineers of the Toyo Kisen Kaisha, who, it is alleged, received regular payments of 21½ cents a ton for all coal received from the Western Fuel and, according to the Government, short-

weighted regularly by the large men conniving with the steamship employees.

Judge Dooling listened to lengthy arguments on both sides and heard the citing of decisions, the prosecution arguing that, while the payments to Japanese ship engineers had no direct bearing on the case, as set forth in the indictments, they were illuminating as showing the scope of what Roche repeatedly referred to as a "gigantic conspiracy" not only against Uncle Sam but against the two big steamship concerns. Judge Dooling did not appear convinced, although he withheld his decision until this morning.

Riddle Tidwell's Figures.

Agent Tidwell was on the stand all day, the defense taking deep delight in riddling his figures with corrections, making him admit that he had erroneously drawn percentages of averages because of insufficient data.

"In not one single instance in the table prepared as a government exhibit," said Attorney E. J. McCutchen, "has the percentage of overrun been correctly computed."

Tidwell readily altered his original figures when the errors were pointed out, but he explained that the fault rested with Superintendent Frederick C. Mills of the coal company, whose records themselves were faulty. [2057—1989]

[Newspaper Clipping from] "Examiner," January
9, 1914.

COAL FRAUD STORY TOLD BY WEIGHER.

Western Fuel Employee Reveals System by Which
Steamship Companies Were Swindled.

Says Officials "Stood In."

David Powers Testifies That When He Warned
Shipping Men, Was Told to 'Shut Up' and
Get Busy.

David G. Powers, formerly employed by the Western Fuel Company and the Pacific Mail Steamship Company, and more recently a special agent in the employ of the United States Treasury Department, testified against the Western Fuel Company yesterday, during the trial of its eight indicted officers and employees before United States District Judge Dooling.

Powers singled out E. H. Mayer, weigher for the company, whom he accused of repeatedly having boasted of "robbing the lime-juicers."

He declared that in his experience as an employee of the company he had caught Mayer deliberately manipulating the weights on the scales so that they worked to the benefit of the fuel concern and against the ships which took coal from that corporation.

Urged to be Dishonest.

When employed by the Pacific Mail Company as a weigher, at the request of Superintendent Frederick C. Mills of the coal concern, he said that he was advised by Mills to "give the Western Fuel the best of it."

"I soon found," said Powers, "that the Western Fuel was robbing the Pacific Mail, just as it had robbed the other steamship companies. I went to William Chisholm, marine superintendent of the Pacific Mail, under whom I worked, and I told him that his company was being robbed. Chisholm tapped me on the back and said: 'You're getting paid, aren't you? Go back, sit down and say nothing'.

"Afterward I went to Robert Donaldson, assistant marine superintendent, and told him that the company was 'getting the worst of it.' He told me to 'shut up.' "

U. S. Weighers Dainty.

Asked to explain how all these things escaped the Federal weighers, paid to see that proper weights were fixed for the coal shipments, he said that in order to avoid coal dust, the United States officials spent most of their time "smoking in the cabin or the engine room."

The Government introduced evidence of the so-called "donation account" of the Western Fuel Company, it being shown, through vouchers, that the commandant of the Mare Island Navy Yard had received \$100 at one time and \$50 at another.

Attorney E. J. McCutchen, for the defense, introduced correspondence later, however, which identified these payments as special deposits, made to cover the cost of work in a contract for hauling coal to Mare Island.

"It is outrageous," said McCutchen, "to have counsel for the Government recklessly spattering

mud on reputations and doing such gross injustice to officers of the navy." [2058—1990]

[Newspaper Clipping from] "**Examiner**," January 10, 1914.

SCHWERIN IS BROUGHT INTO COAL CO. CASE.

Powers Says Pacific Mail Manager Received Money from Vice-President of Coal Concern.

R. P. Schwerin, Vice-president and general manager of the Pacific Mail Company, was charged yesterday by David G. Powers in the trial of the eight indicted Western Fuel Company directors and employees in the United States District Court with having received from James B. Smith, vice-president of the coal concern, certain payments of money at a time when, it is alleged, the fuel company was desirous of keeping coal shortages on oceanic liners a secret.

"In conversations which I had with Edward J. Smith, weigher for the coal company and brother of Jim Smith," said Powers, "asking him how the Pacific Mail Company stood for the discrepancies in the coal loaded on the company's ships, he told me that Jim and Schwerin were very friendly and that Jim gave Schwerin large checks."

Prosecutor Roche when asked later about this feature of Powers' testimony refused to affirm or deny the report that the Federal Grand Jury was even now seeking to obtain evidence which would show that Schwerin and other Pacific Mail Company officials connived with the Western Fuel Company to defraud not only the steamship company but also the United States Government.

"I will say, however," said Roche, "that in conversations with Secretary David C. Norcross of the Western Fuel Company I was informed that at least some of the payments to Schwerin from the coal concern were in the nature of contributions to a good roads fund in which Schwerin was interested."

Schwerin declared last night that he had never received a dollar from any Western Fuel official. He said:

"In 1905, when I was interested in building the Crystal Springs boulevard as one of the committee of the Automobile Club of California, I believe the Western Fuel Company contributed \$100. *Western Fuel Company.*"

Heralded as the Government's star witness in the trial, Powers went yesterday into the hands of the enemy and was given a gruelling cross-examination by Attorney Stanley Moore for the defense.

Powers was questioned about his alleged "understanding" with the Federal officials and United States Special Treasury Agent W. H. Tidwell in particular, that a percentage of fines or penalties or recoveries in a civil action from the Western Fuel Company for its alleged fraudulent coal weights would be paid him for his services in furnishing evidence against the coal barons. [2059—1991]

[Newspaper Clipping from] "Examiner," January 13, 1914.

POWERS ADMITS TALK OF 'REWARD.'
Weeping, U. S. Star Witness Changes Testimony in
Western Fuel Conspiracy Trial.

David G. Powers, the Government's star witness in

the Western Fuel conspiracy trial, opened proceedings yesterday by asking and getting permission from Judge Dooling to change his testimony in regard to his knowledge of rewards, alleged to have been offered him by the Government for his assistance in furnishing evidence against the coal barons, now under indictment.

Last week Powers suffered a lapse of memory in regard to what he had been told by Special Treasury Agent W. H. Tidwell concerning an arrangement, by which he could profit by his testimony. At that time he "couldn't remember." He had refreshed his memory during the Saturday and Sunday recess, and yesterday he admitted at least one conversation with Tidwell and that he had discussed the prospect of a reward with several of his friends and relatives.

Defense is Pleased.

It was just this alteration of testimony which particularly pleased the defense, as Powers' recollection on this matter had changed last Friday between the morning and afternoon sessions of court, and the ground had been laid for his impeachment as a credible witness.

The lawyers for the defense, when they concluded their long and wearying cross-examination of this witness, expressed themselves as well pleased with their work.

Powers, during the gruelling quizzing, had repeatedly broken down on the witness-stand, weeping when forced to tell the details of his arrest for opium smuggling, his imprisonment in the Alameda county jail, his marriage while incarcerated there and his

later separation from his wife.

The lawyers for the defendants contend that they have proved that this "star witness" for the prosecution has been compelled to acknowledge bias and bitterness toward some of the indicted Western Fuel men. They say, also, that he has admitted a further incentive for his testimony, the reward being variously estimated at from \$7,000 to \$40,000, and even \$50,000.

Conspiracy is Alleged.

The defense does not conceal its purpose to show, largely through Powers' testimony under cross-examination, that there was a "conspiracy" to bring about the downfall of the coal company men now under trial.

The closing moments of Powers' long stay on the witness-stand were marked last evening by sharp passages between opposing counsel, special Prosecutor Roche being accused by the defense of asking questions "unworthy of a Government attorney."

To-day a new factor will enter the case, Edwin Powers, brother of David G. Powers, and a former Western Fuel employee who enjoyed unusual confidences in the corporation, being assistant superintendent under Frederick C. Mills, one of the indicted eight, and being in close relationship with James B. Smith, vice-president of the corporation, also under indictment. [2060—1992]

[Newspaper Clipping from] "Examiner," January 14, 1914.

ERRORS HELPED WESTERN FUEL.

Former Employee Tells How the Cargoes Shrunk and Then Swelled.

Testimony against the Western Fuel Company was introduced yesterday in the trial of the eight coal barons and their employees indicted for conspiracy to defraud the United States, the particular evidence being the record of shortages and overages which occurred in the loading and unloading of the company's store ship *Algoa* in 1908.

Edwin Powers, brother of David G. Powers and formerly assistant superintendent of the fuel company, testifying reluctantly, admitted that the coal cargo on the *Algoa*, which was loaded from northern cargoes, grew and heaped up and swelled as though some wonderful leaven had been hidden in it.

The *Algoa* was loaded from the *Indra* and *Thyra* in January and February, 1908. She received 8,418 tons 2,113 pounds, which was 338 tons 997 pounds less than the respective bills of lading of the two boats.

These ships had come to this port from British Columbia with Nanaimo coal and had taken several days to travel from the north. The defense has contended that coal picked up moisture after its trip from the north and after it stayed in this port for any appreciable time.

Coal Gains, Although Dries.

The *Algoa* lay in the stream off Mission street for

eighteen months, and, finally, fire in the hold necessitated the unloading of its cargo. Barges of the Western Fuel Company were hauled alongside the ship and the coal was discharged into them. No government weighers were on hand, this being merely a private matter on the part of the coal concern. The result was that the coal despite the drying out of the cargo as a result of the fire, showed a gain of 116 tons 784 pounds, the total discharge being 8,535 tons 657 pounds as against the 8,418 tons 2,113 pounds placed on board originally.

Later these barges, when they finally discharged their coal on ocean vessels, all showed overages, testified Powers. Every barge reported that it gave up more coal than it received. One barge showed an overage of 106 tons 809 pounds; another barge showed an overage of 62 tons 1,372 pounds.

Thus, as Prosecutor Roche pointed out yesterday, one cargo alone showed three discrepancies, all in the Western Fuel Company's favor. Roche considers this one case as a remarkable refutation of the defense's contention that these shortages and overages, claimed by the government, can be easily explained through natural causes or through any single system of weighing.

Throw Onus on U. S.

In regard to the latter the defense, when it cautiously commenced the cross-examination of Edwin Powers yesterday, laid great stress on the fact that the coal concern's fuel was weighed under the supervision of government weighers, thus throwing the onus of any discrepancies on the Federal author-

ities themselves, one arm of the Federal government which is now prosecuting the coal officials.

Not until Edwin Powers took the stand was it even guessed just how he would comport himself, although his brother, David, had given damaging evidence against the fuel company officials. Edwin proved reluctant to testify against his former associates, but his very diffidence seemed to make an impression on the jury.

Powers admitted that he had taken complaints of short weights from steamship engineers to his superiors, Superintendent F. C. Mills, and Vice-president James B. Smith, both now on trial.

“How often would they complain?” he was asked.

“Whenever they’d catch me,” was the answer.

[2061—1993]

[Newspaper Clipping from] “**Examiner**,” January 15, 1914.

POWERS SAYS HE KNEW OF COAL
FRAUDS.

Tells of Daily Overruns as High as 35 Per cent, and
Says Bins Were Deliberately Overloaded.

“Wouldn’t be an Informer.”

Admissions Made on Cross-examination That Prosecution Was Unable to Get From Him on Stand.

Edwin Powers declared on the witness stand in the Western Fuel case yesterday that attempts had been made to persuade him to testify in favor of the indicted coal officials and that he had personal cognizance of frauds perpetrated in the weighing of coal.

Under direct examination by the prosecution Pow-

ers had not made these admissions. He made them yesterday after the defense had sought to impeach his testimony.

With the fact established through this admission that he had been partial to the defense, Powers went on to tell of the efforts of David Norcross, secretary of the corporation, to insure his loyalty, after the prosecution had failed to extract a promise of co-operation.

Binding Him to Defense.

"Special Treasury Agent Tidwell had one interview with me," he said in answer to one of Attorney Stanley Moore's questions. "He said the government would reward me if I helped the prosecution. I told him that neither he nor anybody could make an informer out of me."

Telling of efforts to bind him to the defense, he said in further answers to questions:

"Norcross said to me, 'We know you're not against us. If not against us you must be for us. Come over to McCutchen's office with me and talk over the barge overages.'"

"Then he told me if the Grand Jury asked me what we were talking about to say that we were discussing generalities. He also spoke of what James B. Smith was going to do for me."

Powers then told of going with Norcross to the offices of the attorneys for the defense, where the issues of the case were discussed.

"Not with a stenographer present," said the witness, and the judge smilingly suggested the possible presence of a hidden dictagraph.

Powers admitted that he had told the lawyers for the defense that the "system" was partly responsible for these discrepancies in weights, but he would not admit that he attributed this as an excuse for all the juggled weights on the Western Fuel's barges.

Powers' Flat Denial.

Powers further denied flatly that he had stated to the lawyers that there had been "nothing wrong so far as the Western Fuel Company or its employees were concerned," adding that he couldn't have said that, "without lying."

Pressed as to why he had not told the attorneys for the defense all he had in his mind, Powers admitted that he had given an "answer to please them."

"You weren't sincere, then?" Moore shot at Powers.

"As sincere as you were," the witness flung back, "when you called me to your office at a time when you knew I was a government witness. You didn't bring me down there to tell you there was a fraud, did you?"

Powers went into the subject of frauds in coal weights with frankness. He said that the "daily reports to Superintendent F. C. Mills and Vice-president J. B. Smith showed overruns of 10, 20, 30 and even 35 per cent. Therefore, it showed conclusively that it was fraudulent, didn't it?" he added.

Powers stated that, besides the record in the books, he and Mills both saw the coal bins on the barges "deliberately and intentionally overloaded when they were selected for weighing."

"On the transport docks, not the Pacific Mail

docks," explained Powers further. "Mills told me to underload the tubs. When I told the stevedores to keep the tubs full and not to have trouble with the Government weighers," continued Powers, "I was saying it for effect, the weighers listening."

"Gumshoe" Men's Ears.

A chance remark from Powers, about gumshoe men overhearing what he had to say, stirred one of the sharpest exchanges since the trial began. Attorney E. J. McCutchen vehemently denied that the defense had any detective in court, and the prosecution, with equal warmth, denied that it had been necessary to retain sleuths. Powers was not pressed to point out in the courtroom the men he had in mind.

Secretary Norcross, whose name had been unpleasantly mentioned earlier in the day, was recalled to the stand late in the afternoon to identify and explain correspondence between the Nanaimo and the San Francisco offices of the Western Fuel Company respecting the discrepancies between the weights on bills of lading from British Columbia and the weights charged to the San Francisco office. [2062—1994]

[Newspaper Clipping from] **"Examiner,"** January 16, 1914.

SECRET DUMPING HELPED FUEL CO.
Reluctant Witness Tells How He Was Ordered to
Discharge Unweighed Coal.

Joseph Waterdoll, for some years motorman and dumper at the Western Fuel Company's bunkers at the foot of Folsom street, testified at the conspiracy trial yesterday, but only after he had been hunted for

weeks and had made an unsuccessful effort to escape from United States Secret Service agents, who tracked him to *him* home, routed him out of bed at 4 o'clock in the morning took him to the Postoffice building, kept him guarded there, and in the evening, took him to a hotel, carried his clothes away and locked the door from the outside.

Although Waterdoll admitted on the witness stand that he had "hidden out" after tearing up one subpoena, he told a story damaging to the defense, for it was he who took orders concerning the secret dumping of coal into the bunkers of the fuel concern.

E. H. Mayer, the coal company's weigher on the bunkers, was named as the man who had given Waterdoll orders to discharge coal from his cars into the bunkers before it had been weighed.

Waterdoll explained how a projecting beam would knock coal from the tops of the cars, how the faulty mechanism of the dumps would shoot tons of coal over the cars and down into the bunkers whenever a lump of coal blocked it, and how the company had removed the planking on the trestle under the cars so that the coal, spilled, would fall down into the company's bunkers, all without reaching the weigher.

"Cheese it, Joe," Waterdoll said Mayer cautioned him. "Look out for 'em. There's an inspector coming up the stairs."

Then, according to Waterdoll, the Western Fuel employees were particularly careful to see that no surplus coal fell by the wayside.

"If the customs officer caught the coal dropping

into the bunkers," explained Waterdoll, "he'd holler his head off."

Special Customs Agents John W. Smith and E. E. Enlow were also witnesses yesterday, corroborating, in the main, the testimony against the defense which David C. Powers had given earlier in the trial.
[2063—1995]

[Newspaper Clipping from] "**Examiner**," January
17, 1914.

PROBE FUEL CASE CHARGE OF COERCION.
Judge Announces He'll Investigate Charge That
Coal Prosecution Imprisoned Witness.

Inquiry Begins on Monday

Special Government Attorneys Deny Bringing Pres-
sure and Demand Immediate Hearing.

Whether Joseph Waterdoll, formerly motorman on the Western Fuel Company's Bunkers and a strong witness for the prosecution, was forcibly held as a witness by Government agents and compelled, against his will, to give testimony damaging to the indicted coal officials, is a matter which Federal Judge Dooling announced yesterday he would investigate Monday afternoon at 4 o'clock.

The announcement of the court came at the conclusion of the day's session, and it surprised both sides, although the defense regarded it as a blow at the prosecution.

Believed Himself Arrested.

"It has come to the attention of the court," said Judge Dooling, "that in the case of Witness Waterdoll some restraint has been used to compel his at-

tendance on this court. And it has appeared from his testimony that it was his belief that he was under some form of arrest.

“The court has not desired at this time to undertake the investigation of collateral matters or to make comment on them, but if it is shown that this witness was held under restraint, without lawful authority and under the apparent sanction of this court, we propose later to find it out. The court desires at this time to state that it is not unobservant of the case.”

Demand Immediate Inquiry.

Special Prosecutor Theodore J. Roche was on his feet in an instant, demanding that the court's investigation proceed immediately, and Special Prosecutor Matt I. Sullivan seconded the request. It was learned that Waterdoll was not present in attendance on the court and, therefore, the investigation went over until next week.

The incident has stirred both sides in the now bitterly fought trial. The defense, speaking in the same strain as the prosecution, declared last night that “it was a shame” that the court had not ordered an investigation *instanter*. The prosecution as vehemently, declared that a thorough inquiry would absolve the Government of any blame in so far as the incarceration of any witness was concerned.

The prosecution contends that Waterdoll had adroitly avoided a summons, had torn up one subpoena, had tried to escape from his home, half clad, when two officers had called at his place at 4 o'clock in the morning, had fallen into their hands and had then surrendered and that, thereafter, he had ac-

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accompanied the Government agents willingly. Water-doll, according to the prosecution, had been drinking since his daughter's marriage during the Christmas season and had, therefore, been an unusually hard witness to corral.

Shortages Reported Often.

William L. Bunker, formerly chief engineer of the Pacific Mail liner *Manchuria*, was the chief witness yesterday, testifying that he had made repeated reports of shortages of coal on his ship to William Chisholm, marine superintendent of the steamship company. He particularly identified the letter of January 29, 1909, when he complained of a shortage of 123 tons on the voyage to the Orient.

Superintendent F. C. Mills of the Western Fuel Company, according to Bunker, had offered him a ton of coal for his own use at his home, but, said Bunker, he replied that Mills had "better put it into the ship." Nevertheless, said Bunker, coal was sent to his house from the Western Fuel Company with a receipted bill.

Coal not Weighed.

Samuel Griffin, formerly assistant motorman for the coal company, told of quantities of coal being dropped from the cars into the bunkers without being weighed—all under the direction of Weigher E. H. Mayer, now under indictment. During the car strike, said Griffin, when the customs weighers arrived at the bunkers late, the employees dumped whole carloads into the bunkers without taking them to the scales, cleaning out the bunkers before the Government men appeared.

Robert Sass, formerly an employee of the Western Fuel Company, gave positive testimony that coal tubs, weighed from the barges on which he had worked, had been not only loaded to full capacity but overloaded so that the customs men had ordered coal taken off, whereas tubs, not loaded for weighing, had been loaded "light."

Former United States Attorney John L. McNab created a stir in the courtroom in the afternoon by dropping in as an interested but silent spectator for the space of a few minutes.

"I didn't stay long," said McNab, "because somebody might say that I was interested." [2064—1996]

[Newspaper Clipping from] "Examiner," January 20, 1914.

SAYS WEIGHT OF COAL WAS DECIDED BY WINK.

Former Western Fuel Employee Tells of Methods.

Although nobody ever gave me explicit orders regarding the underloading of coal tubs on barges in the loading of fuel on barges, said James Ballestra, formerly a coal shoveler for the Western Fuel Company, witness to the trial of the eight indicted men in the coal concern yesterday, it was made plain, he declared, that only those tubs which were to be weighed by the United States Customs weighers were to be given full value.

"The Government weigher winked at us," said he, "when a weight was wanted during the course of the loading of a steamer. I never received a direct

order. That wink was enough for me and for the men working with me.

“When we overloaded tubs, which were not to be weighed,” he explained, “the hatch-tender for the Western Fuel Company threatened us with a loss of our jobs.

Similar testimony was given by D. Gensai, another former coal shoveler. [2065—1997]

[Newspaper Clipping from] “**Examiner**,” January 21, 1914.

KNOWS NOTHING OF COAL CASES.

R. P. Schwerin is Called as Witness by Federal Grand Jury.

R. P. Schwerin, vice-president and general manager of the Pacific Mail Steamship Company, was a witness yesterday before the Federal Grand Jury to explain how his company dealt with the Western Fuel Company at a time when, according to the Government prosecutors, the ship concern and the fuel people worked hand in hand to defraud Uncle Sam by a systematic short weighting, and over weighting of coal shipments.

Schwerin announced that he had nothing to tell concerning alleged coal frauds and that his corporation had no unlawful dealing with the fuel concern or with any of its officials or its employees.

The Government officials are seeking to prove a relationship between Schwerin and his employees and the Western Fuel Company and the probe started yesterday will be continued at the first opportunity.

In addition to Schwerin, the head of the Pacific Mail, the Federal Grand Jury yesterday examined

other officers of the steamship concern—W. S. Miller, chief weigher, and A. J. Thompson, purchasing agent.

Furthermore the Grand Jury catechised several men, accused of being “gum shoe” men in the employ of the fuel company’s defense. One man, who has been a constant attendant at the trial and one of the men who has been spoken of by different witnesses, “Skin-’em-alive” Kelly, was haled before the Grand Jury to explain his interest in the case. He made the explanation that he had been a “friend” of “Doc” (Edward J.) Smith for years and consequently desired to see how the evidence against him shaped up.

Meanwhile, at the trial of the eight indicted fuel company officials and employees the prosecution introduced as witnesses, J. F. Burns, a customs weigher, and Frank McKenna, a stevedore formerly employed by the Western Fuel. [2066—1998]

[Newspaper Clipping from] “Examiner,” January 22, 1914.

COAL WORTH \$1,358 GIVEN TO SCHWERIN.
Pacific Mail Manager Warmed Home With Gifts of
Western Fuel, Admits Sec. Norcross.

Company Paid U. S. Men.

Indicted Official Says “Overtime” Went to Customs
Weighers Though Forbidden by Govt.

R. P. Schwerin, vice president and general manager of the Pacific Mail Company, received from the Western Fuel Company \$1,358 worth of coal for his own private use at his home in San Mateo during

the last six years and the fuel concern charged it all to "operating expenses," according to the testimony of David C. Norcross, secretary for the coal company, when he was recalled to the stand in the conspiracy trial yesterday in the United States District Court.

Norcross elucidated the items in the coal company's books—\$496 worth of fuel delivered to Schwerin from September 11, 1907, to March 17, 1909, and \$862 worth of coal from November 6, 1910, to June, 1913.

How the Bill Traveled.

The fuel company's secretary explained that orders for coal came from the Pacific Mail chief, that they were filed, that the bills were turned over to James B. Smith, indicted vice-president of the coal company, that Smith ordered the bookkeeper to credit the account paid and to charge the amount to "operating expenses."

Norcross added in his testimony that two other officers of the Pacific Mail enjoyed the use of free coal. A. J. Thompson, purchasing agent, and William Chisholm, marine superintendent.

Norcross also admitted that his company had paid United States government weighers for "overtime" during the discharge of coal cargoes, although a flat order from Washington forbade the practice. This payment has been frequently denied by the federal officials concerned.

Three Give Corroboration.

Corroboration of this point was obtained from Budd Hopkins, timekeeper for the Western Fuel Company, as well as from Colonel Charles H. Blinn,

acting deputy Collector of Customs, and Charles T. Cook, a veteran customs clerk.

Entries in the Western Fuel Company's books were introduced into the record yesterday to show that these payments to customs-house officers were recognized as illegal—the items being masked by "C. H. O." or "96." As much as \$240.50 was paid in this way for extra services in the last half of the year 1910.

The prosecution completed its case yesterday afternoon just at the hour of adjournment—4 o'clock. Because an important witness for the defense must come a considerable distance in order to give his testimony, Judge Dooling granted a recess for the jury until Monday morning at 10 o'clock. The court will be busy to-day, however, hearing the arguments which will be made by lawyers for the defendants, regarding the dismissal of the charges against the indicted men, the allegation being that no proof of a "conspiracy" to defraud the United States Government has been established. [2067—1999]

[Newspaper Clipping from] "**Examiner**," January 23, 1914.

J. L. HOWARD OF WESTERN FUEL IS DEAD.
President of Company Dies as Wire Comes to
Dismiss Fraud Indictment Found Against Him.

Was Ill but a Few Hours.

Telegram Asking That Stain on His Name Be
Removed Is Two Minutes Too Late.

TELEGRAMS IN HOWARD CASE.

TEXT OF WIRES EXCHANGED.

Here are the telegrams which were exchanged be-

tween the special prosecutors for the Government in the Western Fuel cases and the Attorney General yesterday in regard to the dismissal of the charge against John L. Howard, president of the coal concern, who was at that time on his deathbed:

San Francisco, January 22, 1914.

J. C. McReynolds,

Attorney General,

Washington, D. C.

Evidence for Government in Western Fuel case closed last evening. Motion to dismiss as against certain defendants will be made to-morrow. Defendant John L. Howard, president of company, who intended to make motion to dismiss, was stricken last night with apoplexy. He is reported to be unconscious and in dying condition. His attorneys have strongly urged us to consent to dismissal before death occurs. If this report is confirmed by a reputable physician selected by the Government, shall we *nolle pros* as to him? Please answer immediately.

SULLIVAN & ROCHE.

Washington, D. C., January 22.

Sullivan & Roche,

785 Market St.,

Humboldt Bank Bldg.,

San Francisco, Cal.

Your telegram of to-day asking whether under distressing conditions represented you should enter *nolle prosequi* against Howard is received. You may feel at liberty to take such action as, viewing all

circumstances, you may think is clearly in harmony with public interests.

J. C. McREYNOLDS,
Attorney General.

John L. Howard, president of the Western Fuel Company, indicted and on trial for conspiracy to defraud the United States Government in the matter of duties on coal, died yesterday afternoon at his home, 87 Vernon avenue, Piedmont, less than twenty-four hours after Special Prosecutors Roach and Sullivan had completed the presentation of their case against him and his fellow-officials, and exactly two minutes before a telegram came from Attorney General McReynolds authorizing the dismissal of the charge against him.

With dramatic suddenness Howard collapsed at his home on Wednesday night on his return from the trial at which he had been a constant attendant ever since its inception on December 9.

A stroke of apoplexy was quickly followed by symptoms of paralysis. He sank into insensibility and never regained consciousness, the end coming at 3:18 o'clock after the attending physicians had vainly endeavored to strengthen the patient's rapidly weakening heart.

News Reaches the Court.

News of Howard's alarming condition did not reach Prosecutors Roche and Sullivan yesterday until 11 o'clock. At that time Attorneys Warren Olney and E. J. McCutchen communicated with the Government's counsel, urging their consent to a dis-

missal of the case in view of the imminence of their client's death.

A telegram was rushed to Washington, stating the facts and asking the Attorney General's consent to the entering of a "*nolle prosequi*" in the case in so far as it concerned the stricken defendant. In response to Sullivan and Roche's request for an immediate reply the Attorney General sent back an answer telling the special prosecutors that they were "at liberty to take such action as, viewing all the circumstances, they might think to be clearly in harmony with public interests."

It had been planned to hasten to court, call an emergency session and make the motion which would have wiped the stain from his name.

Dr. John Gallwey had been hurried to Oakland to make an investigation of Howard's condition, independent of the report made by the stricken man's own physicians, Dr. A. Liliencrantz of Oakland and Dr. Emile Schmoll of San Francisco. Dr. Gallwey arrived just as the end came.

This morning Judge Dooling in the United States District Court will hear the Government's special prosecutors make the motion to dismiss the charge against Howard—a motion which is now only a formality.

Pleas for Seven Others.

This morning, too, special counsel for the seven surviving defendants in the conspiracy trial will make motions asking the dismissal of the charge against all of the accused men. Should these be denied by Judge Dooling, separate motions will be

made in behalf of individual directors of the coal concern, Robert Bruce and Sidney V. Smith.

Howard's death removes one of the most notable figures in the business world on both sides of the bay. Besides being president of the Western Fuel Company, which he organized in 1902, taking over not only the Howard Company, but also the J. C. Wilson Company and the interests of John Rosenfelds, he was president of the Alameda Sugar Company, which he organized in 1888, and president of the Union Sugar Company, which he organized in 1896. He was also president of the Howard Company of Oakland, which did a large business in builders' supplies, and head of the Alameda Farms Company, owning a large amount of land in the Sacramento valley. He was a director of the Central National Bank of Oakland and a member of the Berkeley Club and the Pacific Union Club.

John L. Howard's fortune has been estimated at close to a million. The bulk of his wealth was made on this coast since he came here from Philadelphia in 1883 to handle the fuel business of the reorganized Oregon Improvement Company. He died in his sixty-fifth year.

Says Trial Caused Death.

"My father's death was directly due to the long worry and humiliation of the suit against him," said Sidney Howard. "He knew that the suit would be dismissed eventually, and the dismissal came at last, but it arrived too late. Word was sent to the house a few minutes after my father's death. It was the continued postponement of the dismissal of the suit

and the notoriety of the affair that killed him.”
[2068—2000]

[Newspaper Clipping from] “**Examiner**,” January
24, 1914.

HOWARD’S CASE IS DISMISSED.

Counsel for Other Western Fuel Men Plead With
Judge to Quash Indictments

The case against John L. Howard, former president of the Western Fuel Company, under indictment for defrauding the United States Government, was stricken from the records yesterday on motion of Special Prosecutor Matt I. Sullivan.

“That will be the order,” was Judge Dooling’s simple comment, and immediately counsel for the defense plunged into lengthy arguments, urging the dismissal of the indictments against all of the defendants and asking the court to instruct the jury on Monday morning next to return a verdict of “not guilty.”

Attorney E. J. McCutchen, senior counsel for the defense, made the opening speech.

“The Government has failed,” he said, “to prove its charge, outlined in the indictment, that these defendants combined and conspired to defraud the United States of import duties and drawbacks. The evidence adduced has been entirely insufficient.

“I am not authorized to speak in behalf of the defendant Edward J. Smith, with whom I have exchanged but half a dozen words, but I wish to say that one of the most cruel things in this case was the inclusion of this man in the list of indicted for no other reason *that* that, earlier in life, he committed

a fault, and paid the penalty.

“He was only a clerk for the coal company, copying figures given him by a Government weigher, and no proof has been produced by the Government that he had anything to do with the offenses alleged.”

Samuel Knight made a special plea in behalf of Edward J. Smith, James B. Smith, Frederick C. Mills and Edward H. Mayer, indicted employees of the Western Fuel Company. Concerning Edward J. Smith, former Tax Collector of the City and County of San Francisco, who several years ago served a term in San Quentin for embezzlement, he declared that his indictment was “an outrage.”

Peter F. Dunne, special counsel for Sidney V. Smith, another fuel company director under indictment, devoted the entire afternoon making an elaborate plea for his client’s acquittal.

Roche and Sullivan will be heard this afternoon.

Judge Dooling said yesterday that court would remain in session until all the arguments have been heard.

Several of the Western Fuel’s lawyers will attend the funeral of John E. Howard in Oakland this afternoon. [2069—2001]

[Newspaper Clipping from] "**Examiner**," January
25, 1914.

LIBERTY FOR HIGHER-UPS IN WESTERN
FUEL TRIAL.

Joseph L. Schmidt, Sidney V. Smith, Robert Bruce
Given Freedom, Judge Holding That
Evidence is not Sufficient.

James B. Smith, F. C. Mills and E. H. Mayer Must
Still Face Federal Jury on Charges of Hav-
ing Conspired to Defraud.

Judge's Order Comes While Those Concerned are
Attending Funeral of Late John L. Howard,
Who Was President of Company.

DEVELOPMENT IN COAL TRIAL.
PRESENT STANDING OF CASE.

The Government's prosecution of Western Fuel
Company officials and employees for conspiring to
defraud the United States has broken up thus:

DEAD.

John L. Howard, president.

FREED BY THE COURT.

Sidney V. Smith, director.

Robert Bruce, director.

Joseph L. Schmidt, director and treasurer.

STILL HELD FOR TRIAL.

James B. Smith, vice-president and general manager.

F. C. Mills, superintendent.

E. H. Mayer, weigher.

E. J. Smith, checker.

While the indicted directors of the Western Fuel

Company were attending the funeral of the late John L. Howard, president of the coal concern, who had been removed by death from the trial now going on in the United States District Court, Federal Judge Dooling yesterday afternoon dismissed the cases against three "higher-ups"—Joseph L. Schmidt, treasurer and director of the company, and Sidney V. Smith and Robert Bruce, directors for many years.

Insufficient evidence against the three coal barons was the explanation offered by the court for this action.

James B. Smith, vice-president and general manager, F. C. Mills, superintendent, E. H. Mayer, weigher, and E. J. Smith, checker, must still face the jury and fight the Government's special prosecutors by furnishing evidence to offset the testimony pointing to their guilt as defrauders of the federal government.

Difficulty is no Excuse.

"The difficulty of getting evidence," remarked Judge Dooling [2070—2002] yesterday afternoon, in ruling from the bench after he had listened to special prosecutor Matt I Sullivan argue for an hour and a half opposing the motion of the lawyers for the defense, "is no excuse for not getting it.

"The Court has no doubt about the sufficiency of the evidence against James B. Smith, P. C. Mills, E. H. Mayer, and E. J. Smith, warranting their being held to make their defense.

"But, so far as Sidney V. Smith, Robert Bruce and Joseph L. Schmidt are concerned, the testimony

connecting them with any actual knowledge of the alleged criminal acts is extremely meager, if not lacking entirely. And while, if I may use an expression used by counsel, the 'higher ups' should not be excused on that account, they should not be convicted on that account, either.

Would Disregard Verdict.

"If a jury, on the testimony presented, should return a verdict finding these three men guilty of the offenses charged in this indictment, I should feel it the duty of the Court to set it aside."

The representatives of the defense who were in court at the time, Attorneys Peter F. Dunne, Samuel Knight, E. J. McCutchen and A. P. Black, received the Court's ruling with undisguised satisfaction.

The prosecution accepted the decision with the observation that, under the law, there was little else for the judge to do. Special Prosecutors Sullivan and Roche explained that, from the outset of their investigation, they had found it extremely difficult to find the evidence which they wanted.

"We have combed the books of the corporation for the last two months," they said, "and we have been unable to procure the evidence we wanted.

Says Evidence was Slight.

"We conceded that the evidence we presented against these three directors, just excused, was very slight, but in our opinion it pointed to guilty knowledge.

Special Prosecutor Sullivan dwelt at length in his speech yesterday on this point, for it was the real

bone of contention between plaintiff and defendants. It was Sullivan, who, harking back to the graft prosecution days, used the phrase, "higher ups," which was the catch-word quoted later by Judge Dooling.

"The 'higher ups,' " he declared with vehemence, "always remove themselves as far as possible from the chance of being caught in the toils. It is ever the underlings who commit the wrongs and run the chances—the men, who, working for nominal pay, do the bidding of their employers and carry out the schemes which make the 'higher ups' wax rich and lift their heads arrogantly in the social and business world."

Speaks Pitingly of Trio.

Sullivan spoke pityingly of the activities of Mayer and Mills and E. J. Smith in conniving to bring about the alleged overweights on coal barges and bunkers, and he commented scornfully on the charge made by lawyers for the defense that it was "awful cruel to indict E. J. Smith, who had once before paid the penalty to the law for a fault."

"James B. Smith, his brother and his employer," shouted Sullivan, "was the one who really committed a cruelty in putting him in a place where he had to commit an offense in order to hold his job and add to the brother's wealth."

"And James B. Smith," continued Sullivan, warming to the subject, "the man who had complete charge of the coal company's operations at this port, who employed all the help, who was in constant touch with every practical detail of the business and [2071—2003] who not only knew of the methods em-

ployed, but ordered frauds and even committed many of them himself—this man, in the opinion of the Government, is most guilty of all.

Is the Most Blameable.

“It was Smith who bribed the Pacific Mail officials and who was responsible for the corruption of Government weighers, too. It was Smith who bribed R. P. Schwerin with regular presents of coal—Schwerin, high in business and social circles and supposed to represent the stockholders of the big Pacific Mail Company and stand on guard to keep out the petty grafters who might be caught conniving at thefts from his own company.

“We never supposed that Schwerin would stoop so low as to accept a couple of tons a month *form* the company—coal which J. B. Smith charged to ‘operating expenses’—and then let these petty grafters remain in his employ.

“In my opinion,” remarked Sullivan, “these disclosures of money and coal payments to Pacific Mail people and to Government weighers was simply lifting one edge of the curtain.”

This was the special prosecutor’s only reference to what the Federal Grand Jury is now investigating. [2072—2004]

[Newspaper Clipping from] “**Examiner**,” January 27, 1914.

COAL EMPLOYEES DAB WHITEWASH.

All Give Themselves Clean Coat on Witness Stand at Western Fuel Trial.

“Anything I made was perfect,” asserted Blacksmith “Big Bill” Olinder, of the Western Fuel Com-

pany, testifying yesterday for the defense in the coal conspiracy trial in the United States District Court.

Olinder was talking about the new link, which he forged to replace the now famous "bent link" on the coal bunker cars, which the prosecution charges was responsible for many "crooked" weights in the delivery of coal on the waterfront.

Olinder said he had "never made a link which would give the company the best of it on the scales."

Clean certificates of good character were given themselves and their associates by Arthur Mullan, general foreman of the Western Fuel Company; Frank Wilson, hatch-tender; Andrew Rocca, hatch-tender, and A. J. Schultz, boss stevedore. They answered in the affirmative all questions put to them by Attorney Stanley Moore, and their combined testimony sounded like homilies on the ethics of coal shoveling and coal weighing.

Models of Integrity.

It appeared, from their testimony, that only one injunction was necessary in fifteen years to keep them in the straight path of rectitude. They kept the buckets full—but not too full; they passed the word accordingly to their subordinates; they never indulged in "winking" to suggest false weights, and they never received complaints from their superiors either about overages or about shortages. The work as Wilson, Rocca, Schultz et al. declared, was done perfectly.

Sidney V. Smith and Robert Bruce, Western Fuel directors, excused by Judge Dooling, dropped in to

lend their moral support to the remaining defendants, Vice-President James B. Smith, Superintendent F. C. Mills, Weigher E. H. Mayer and Checker E. J. Mills.

Lawyers are Absent.

Not only was the complexion of the defendants' row changed; the lawyers' table was diminished. Attorneys Peter F. Dunne and Pringle were absent from the counsel's ring. These two had as their particular concern the salvation of the directors of the coal concern, and, now that this had been accomplished, they had departed, leaving the burden of the defense on the shoulders of Attorneys McCutcheon, Moore, Knight, and Olney.

Some time to-day, it is expected, the defense will spring its star witnesses, Thomas R. Stockett, superintendent of the coal company's mines at Nanaimo, B. C., and a horde of experts who will testify to the action of moisture and evaporation on the weights of coal. [2073—2005]

[Newspaper Clipping from] "**Examiner**," January 29, 1914.

JURY WILL SEE BARGE LOADING.

Court Permits Inspection Trip To-day Against
Protests of Prosecutors at Trial.

While coal barges are taking on coal of the Western Fuel Company this morning at the Folsom Street and Mission Street bunkers the twelve jurors selected to try the conspiracy case in the United States District Court will inspect the corporation's property.

Federal Judge Dooling made an order yesterday

sending the jury, the opposing counsel and the court officers on this junket, that the mysteries of the coal trust's manner of handling fuel may be made clear before the close of the present trial.

The special prosecutors for the Government, Sullivan and Roche, objected to the jury's inspection of the coal company's plant at any time when the actual operation of loading barges was in progress, it being their contention that the fuel concern naturally would see that coaling conditions were just as perfect as strict orders to its employees would guarantee.

Judge Dooling supported the defense in his ruling, asserting that the only object of the visit was to familiarize the jurors with the general methods employed on the bunkers, irrespective of any contention whether or not the coal cars and buckets were overloaded or underloaded.

Life Amid Miracles.

"We are not living in the day of miracles," protested Special Prosecutor Roche in objecting to the Court. "The probabilities are, then, that coal buckets will be evenly filled throughout the entire process, which, as the Court and jury must know, is contrary to the evidence introduced by the Government in this case."

"Yes," replied Judge Dooling, "but I will trust the jury to distinguish between what it sees and what the evidence proves to be in this case."

The prosecution extracted a promise from the other side that the planking could be ripped up on the bunkers and that other conditions could be shown, substantiating the claim of the Government that the

bunkers were so altered in the past that gigantic frauds were made possible.

Alleged Threat by Powers.

The testimony, adduced by the defense in the proceedings yesterday, was given by Joseph H. Desmond and John Thomas Linehan, who emphasized a certain conversation, alleged to have been held between them and David G. Powers, one of the chief Government witnesses, in which Powers is said to have declared that he would "get J. B. (Smith) and that Jew, Mayer," two of the defendants in the case.

"Larry" Brennan, gateman at the Pacific Mail docks, corroborated the testimony given the day before by Policeman John Galloway, that David Powers had boasted that he was going to get close to \$50,000 for his work as an informer for the Government in the Western Fuel investigation. [2074—2006]

[Newspaper Clipping from] "**Examiner**," January 31, 1914.

BREAK EVEN IN FUEL CASE ROWS.

Judge Rules Out Evidence Offered by Defense, Then Bars Letter from Prosecution.

Documents offered by prosecution and defense in the Western Fuel Company conspiracy trial yesterday were ruled out by Federal Judge Maurice T. Dooling, although the two sides fought vigorously to have their evidence presented to the jury.

The defense, through Thomas R. Stockett, general manager of the Nanaimo plant of the Western Fuel Company, sought to introduce a report, which had

been made about the moisture in the mines at Nanaimo by A. C. Fieldener, Government expert.

Prosecution Opposes Report.

The prosecution refused to allow the admission of this evidence, arguing that the wetness of coal in the mines had nothing whatever to do with the question at issue—namely, the moisture and the evaporation of coal carried from Nanaimo to this port.

Attorney Warren Olney insisted that it was a material point, inasmuch as the defendants were being blamed for fraudulently weighing coal, when the dampness of the fuel was the real cause for the discrepancies in weights.

On the prosecution's contention that it had not been shown that the defendants had ever read and relied on the reports, Judge Dooling refused to admit the evidence.

Misconduct, Declares Defense.

The Government lost the next important bout—an attempt to introduce into the record a letter purported to have been sent by General Manager James B. Smith, one of the defendants, to Stockett, in May, 1906—a message which Special Prosecutor Matt I. Sullivan declared threw a floodlight on the methods of the “coal trust,” but which the attorneys for the defense excitedly branded as immaterial, inconsequential, etc., and, on top of it all, “misconduct on the part of the prosecution.”

Sullivan resisted the charge, declaring that the mysterious letter bore directly on “the methods and practices of the company at Nanaimo” and, for that reason, should be admitted as evidence.

The jury was on the *qui vive*, expecting a new sensation, but the Court ruled the letter out—and it was refused admission as an exhibit.

Neither the prosecution nor the defense would discuss the letter, the prosecution fearing contempt, and the defense insisting that “it didn’t amount to anything, anyway.” [2075—2007]

[Newspaper Clipping from] “**Examiner**,” February 3, 1914.

BIG DEFENSE GUN FIRED IN FUEL FIGHT.
Recognized Expert With Many Accomplishments,
Put on Stand by Western Fuel Attorneys.

Strong Play on ‘Moisture.’

Prof. Parr to Explain How It Is Sopped Up in
Transit of Coal From Mines, Increasing Weight.

Professor Samuel W. Parr, who occupies the chair of applied chemistry at the University of Illinois, coal inspector for the State institutions of Illinois, for nearly twenty years engaged in the study of coal, the recognized authority in America on the subject of coal and coal mining, is the big gun in the Western Fuel Company’s defense in the conspiracy trial now under way in the United States District Court.

Professor Parr formally made his advent in the case yesterday morning, although he has been on this coast, both here and at Nanaimo, for the last month.

The defense introduced Professor Parr with a flourish. It was brought out by Attorney Warren Olney Jr. that in addition to his official standing in Illinois the scientist had been a prolific writer on the subject of coal; that he had invented several devices

used by engineers in the handling of coal; that he had umpired several disputes between coal mine owners and operators; that he had examined and reported on half a thousand coal mines and that he had at the present time the important position of chairman of the committee for devising standard methods for coal inspection in the American Society for Testing Materials.

Hopes of the Defense.

All this led up to the defense's contention that when the professor announced that coal sopped up moisture in transit from the northern mines to this port, the government's contention, that frauds in overages were perpetrated, would vanish into thin air.

Before Professor Parr was led into a discussion of his own observations on the variations of coal weights due to oxidation and moisture content, the defense made an ineffectual attempt to get him to read into the record lengthy excerpts from bulletins, issued by the United States Department of Mines and the Geological Survey. The prosecution objected, and the court sustained its contention.

"This," observed Judge Dooling, seems to be an attempt to prop up this witness' testimony by government publications. Finish the examination of the witness and then, if these pamphlets are admissible as evidence, introduce them."

Defense Shows Persistence.

Despite this ruling the defense persisted in its attempt to get before the jury, through Professor Parr, the findings of the government scientists. Both sides

bombarded each other with judicial opinions, and, for a long time, Judge Dooling was busy passing on objections, stubbornly raised by the prosecution.

Even when Professor Parr began giving his own evidence his direct examination was blocked again by the prosecution, which insisted that his experience was largely with Eastern coals and that it had, therefore, little bearing on the problem of the Nanaimo product.

“The defense has a right to get from this witness general statements, covering the changes in coal,” said Judge Dooling. “If Nanaimo coal is exceptional it rests with the government to prove this.”

The decks cleared, the Illinois coal expert made the statement that low moisture bituminous coal, such as that received from outside sources by the Western Fuel Company, had as much as 2 per cent of water, while high moisture coal contained sometimes as much as 15 per cent of water. Exposure to the elements altered these figures.

Jury in Dark Maze.

Professor Parr had the jury well into the mazes of coal *exidation* and the increases in weight which followed when court adjourned until this morning.

A touch of comedy was injected in the morning when Edwin Parke, a Pacific Mail weight checker, took the stand to tell the jury that never, in his eleven years' experience with the Western Fuel Company, had he ever so much as heard of barge overages, although he did recollect that once or twice there had been some comment about shortages. Parke had heard only sporadic cases of complaints from his own

company's engineers about shortages in coal consignments. [2076—2008]

[Newspaper Clipping from] "**Examiner**," February 4, 1914.

EXPERT ON COAL CANNOT EXPLAIN GAIN IN WEIGHT.

23 Per Cent Increase in Cargo Larger Than Possible
From Moisture.

Tilts With Prosecutor.

Tells of Trip to Nanaimo to Study Question for
Western Fuel Company.

Neither with oxidation nor with moisture absorption could Professor Samuel W. Parr of the University of Illinois, coal expert and the star witness for the Western Fuel defense in the conspiracy trial in the United States District Court, explain some of the "overages," which the Government called to his attention in the course of his cross-examination yesterday.

In four days, it was shown by the coal concern's own figures, a cargo on the barge Comanche increased 23 per cent. Oxidation, said Professor Parr, might have accounted for possibly one-quarter or one per cent, and as much as one and one-half per cent, but no more. Although this was in the latter part of May the coal expert said that humidity might have played a part in the swelling of this cargo, but he admitted that the saturation limit of coal, under the most extraordinary conditions, was eight or nine per cent.

"If oxidation will make coal increase in weight like

that," observed Special Prosecutor Matt I. Sullivan, "a dealer can get rich by just keeping his stock stored until it doubles its content."

Admonished by Judge.

Then the professor launched into an argument in defense of his theories and Federal Judge Dooling had to admonish him not to indulge in altercations with counsel. But the Illinois expert didn't like the special prosecutor's tone toward him, and, when asked about a comparison between ordinary weather conditions and conditions such as those in the court room, he could not forbear saying:

"Well, this is quite a warm courtroom in so far as temperature is concerned."

The prosecution asked the coal expert to explain other overages, how the barge Nanaimo, in seven days, showed an increase in the weight of its coal amounting to 321½ per cent; how the Ludlow showed in eighteen days an average of 24 per cent.

Professor Parr admitted that these remarkable increases in weight of coal were "beyond what could be expected even with the addition of water" from rain or hose, and even considering the percentage gained through the oxidation of sulphur, pyrites or carbonaceous material.

Gets \$25 Per Day.

Professor Parr in the course of his cross-examination admitted that he had been in the employ of the Western Fuel Company off and on since the latter part of August, when he went to Nanaimo to study coal conditions there. He said that he had accepted a fee of \$25 a day and expenses and he had devoted

about 100 days *is* assisting the coal defendants.

The professor was careful to point out that the terms of his retaining by the Western Fuel defense were that he should make his independent investigations and file a report, and that, afterwards, if anybody wanted to hire him, he would consider a proposition.

On the point of shortages—the decrease in the weight of coal in shipment in four days from Nanaimo to this port—the professor said that if shortages or overages occurred in such a short voyage they could not amount to more than $\frac{1}{2}$ of 1 per cent at the utmost—but he couldn't tell which way the difference might jump. [2077—2009]

[Newspaper Clipping from] “**Examiner,**” February 5, 1914.

JUDGE CALLS HALT IN FUEL TRIAL DELAY.

Stops “Frivolous” Examination of Coal Expert Parr and Declares Lawyers’ Bickering Must Cease.

Statistics Tickle Sullivan.

Professor’s Figures, if True, Would Put San Francisco Under 84 Feet of Water, He Says.

Federal Judge Dooling yesterday peremptorily ordered the end of the cross-examination of Professor Samuel W. Parr, the coal expert, who had been two days and a half on the witness-stand as the one big witness for the Western Coal Company in the trial that began December 9.

The lengthening of the trial beyond all expected

periods has brought about a psychological situation involving the patience of both judge and jury, and irritation at further delays will have an important bearing on the outcome of the case.

Judge Scores Lawyers.

Judge Dooling tried repeatedly yesterday to make the opposing lawyers hurry up. Once, when Special Prosecutor Sullivan and Attorney E. J. McCutchen, for the defense, crossed swords in a spirited altercation, the court said:

“This bickering over the tables must cease. I hope I won’t have to resort to more drastic measures at the conclusion of this trial.”

Professor Parr had, under redirect examination yesterday, told the jury that rain-water, pouring into open coal bunkers at the average rate of two feet a year, would cause a swelling of two tons to every inch of moisture, or a matter of fifty tons a year in a bunker 800 square feet in area. Multiplied by the areas of the different bunkers, said Professor Parr, there would be 6,250 tons of water absorbed by the exposed coal in one year, or 43,750 tons of water in seven years (the period covered by the indictments against the coal concern officials).

Sullivan Laughs at Figures.

Professor Parr made a deduction of one-fifth for ordinary evaporation of this immense quantity of water, leaving 35,000 tons of water still in the coal. Estimating the percentage on the basis of 2,000,000 tons, handled by the coal company, the professor deduced that the moisture increase in the total would be about 1.8 per cent.

Special Prosecutor Sullivan, on hearing these statistics, could not restrain his laughter. In high glee he went to a set of figures for his own information, and discovered to his consternation that rain water, absorbed by the city of San Francisco in the same manner as Western Fuel coal ate up moisture, would leave the metropolis to-day under 84 feet of water. The city would be completely submerged, with the exception of the tallest skyscrapers.

It was because Sullivan insisted on asking hypothetical questions, based on the professor's testimony, that the lawyers for the defense begged the court to stop the cross-examination "because it was ridiculous." Then Attorney Warren Olney himself offered a similar question in redirect examination, and Judge Dooling, glancing at the clock, said with a shrug of his shoulders, "Oh, nonsense," and court adjourned immediately.

Both sides last evening expressed perfect satisfaction at the result of Parr's testimony. Both claimed to have nailed potential facts into the record for the edification of the jury, and both looked forward gleefully to the testimony of the other coal experts, who will be put on the stand next. These are Professor E. E. Somermeier of the Ohio State University and Professor A. M. Folsom, associate professor of mining at the Stanford University. [2078—2010]

[Newspaper Clipping from] "**Examiner,**" February
6, 1914.

FOUR FUEL DEFENDANTS TO TESTIFY.

J. B. Smith, E. J. Smith, E. H. Mayer and F. C. Mills
to Contradict Charges by Government.

Prosecutors are Pleased.

President John Caspar Branner of Stanford Refutes
Testimony of Professor S. W. Parr.

The four defendants remaining in the Western Fuel Company conspiracy trial will be placed on the witness stand by their lawyers to contradict by their own personal stories the evidence introduced by the Government against them.

The four are James B. Smith, vice-president and general manager of the coal concern; Edward J. Smith, weigher for the company and formerly tax collector of San Francisco, who served a term in the penitentiary for embezzlement; Edward H. Mayer, weigher for the corporation, and Frederick C. Mills, superintendent.

Will Deny Charges.

Attorney E. J. McCutchen, for the defense, stated last evening that the defendants would deny categorically the damaging statements made against them by David G. Powers and his brother, Edwin.

The special prosecutors for the Government, Sullivan and Roche, expressed themselves as pleased last night. The prosecutors say they expect no difficulty in puncturing their stories.

Attorney McCutchen stated last evening that the

defense expected to complete its case by next Tuesday evening. Professor A. M. Folsom of Stanford will take the stand to-day, and he will be followed later by a number of coal dealers and then will come the four defendants.

Will Recall Edwin Powers.

The prosecution expects to throw into the record a mass of evidence in rebuttal, and among the chief witnesses will be Edwin Powers, who has aligned himself with the prosecution since the defense made a determined effort to discount his testimony against the coal trust employees. It may be safe to predict that the jury will have the entire case in its hands by the end of next week.

The jury was entertained yesterday by college dons—President John Caspar Branner of Stanford University and Professor E. E. Sommermeier of Ohio State University. Much scientific language found its way into the already bulky court record.

Branner Aids Prosecution.

Dr. Branner, head of Stanford University, proved not such a good witness for the defense as he was expected to be. He denied what Professor S. W. Parr of Illinois University had declared to be true—that oxidation caused an instant, appreciable difference in the weight of coal, adding to its bulk. Dr. Branner said that oxidation took a long time and that its effect, in a commercial way, was negligible.

The point, clinched by the Government, was not only that coal coming to this port failed to gain weight but the more significant fact that these coal experts were not at all of the same opinion.

Professor Sommermeier proved such an interesting witness to the Government that he was kept on the stand, at the express order of the court, until all the information wanted had been extracted from him, the jury being kept long after the hour of adjournment for this one purpose.

Sommermeier, in the course of his testimony, startled the court by declaring that coal inspection methods at the Presidio were slipshod. [2079—2011]

[Newspaper Clipping from] "**Examiner**," February 8, 1914.

BIG FORTUNE IS SPENT ON COAL CASES.
More Than \$200,000 Estimated Cost of Prosecution
and Defense in Western Fuel.

Expensive Lawyers Hired.

Trial is Near Record for Length of Time, Having
Already Occupied Thirty-two Days.

More than \$200,000 will be spent by both prosecution and defense in the Western Fuel Company conspiracy trial before the case is ended. The indicted men are spending at least \$150,000 in lawyer's fees, pay for experts, clerical and other work. The Government is paying Special Prosecutors Matt I. Sullivan and Theodore J. Roche a handsome fee to handle this, as well as the Diggs-Caminetti white slave case, and there has been a small army of men in the employ of Uncle Sam for many months, gathering and collating the evidence against the coal trust officials.

This \$200,000 is being spent in the bitter legal battle to decide whether or not the Western Fuel men

conspired to defraud the United States out of import duties on coal, "drawbacks" on that coal and fuel sold to army transports. The sum involved in these prosecutions is close to \$300,000, and, if a conviction is secured in this present case, the Government will lose no time in starting civil suits to collect this money, alleged to be due Uncle Sam.

Has Record for Length.

Not in years has there been such a long-drawn case in the local Federal courts. The trial commenced on December 9 last, and the case has been constantly before Judge Maurice T. Dooling, with the exception of three weeks during the Christmas season, when a recess was taken on account of the holidays. Already the trial has consumed thirty-two court days, or the equivalent of six weeks. The one notable case, which took longer time than the Western Fuel case, was the trial of the Southern Pacific strike question in 1894, when Federal Judge W. W. Morrow held court seventy days.

An enormous record has been made in this Western Fuel trial. Already the court stenographers have filled 3,700 pages of transcript, or a total of 1,110,000 words, to which must yet be added the record in the closing days next week, and a matter of 100,000 words in tabulations. The stenographers' fees alone represent a comfortable sum of money.

Roomful of Exhibits.

The exhibits which both prosecution and defense have filed make a good roomful. The Government dumped into the courtroom hundreds of books, obtained from the Western Fuel Company only after

the secretary of the corporation, David C. Norcross, had been sentenced with a term in jail and a fine for contempt of court in refusing to deliver them up. Special Treasury Agent W. H. Tidwell, who has prosecuted the technical side of the investigation, has furnished an enormous amount of figures, tables and statistics of all sorts, the result of his studies in the corporation's books.

The defense has been busy in the last few days piling up on the clerk's desk lengthy Government reports and the reports of experts and it has already met the Government's exhibits of photographs with a set of its own, taken on the waterfront properties of the fuel company.

Generally a trial in the United States District Court is devoid of picturesque features, but the Western Fuel case has been full of dramatic incidents—events which will cause it to be remembered for many years to come.

Starts With Eight on Trial.

The case started with eight defendants. When the prosecution had closed its side, John L. Howard, president of the fuel company and himself a defendant, collapsed and died within twenty-four hours—the prosecutors making a vain effort to reach Washington by wire and get permission to dismiss the case against him before the end came.

Two days later, while the Howard funeral was being held, Judge Dooling, on motion of the defense, dismissed the cases against the other "higher-ups." Directors Sidney V. Smith, Joseph L. Schmidt and Robert Bruce, who were among the indicted. The

case has gone on as if nothing had happened, the fight growing sharper as the closing days of the trial draw nigh.

Two of the Government's witnesses have been made the special targets for the guns of the defense. They are the Powers brothers, "Dave" and "Eddie," the former for several months a special Treasury officer, the latter a very reluctant witness until the defense undertook to impeach his testimony, since which time he has been indefatigable in aiding the Government prosecutors in unearthing the evidence to corroborate his original story.

Charge Made by Girl.

David Powers, early in the trial, was suddenly arrested on a charge preferred against him by a young girl. That case has not yet been brought to trial, although the prosecution has demanded it and went so far as to call a special session of the Federal Grand Jury to inquire into the causes which led to the attack on him at that particular time, although the brilliant array of legal lights retained by the defense have denied that "gumshoe men" have been employed by them, the trial in the United States District Court has been remarkable for the presence of well-known private detectives and "strong-arm men."

The prosecution several weeks ago found itself in hot water because it was brought out in court that a certain witness, who had dodged a subpoena for many months, had been seized at his home, hustled to the Postoffice building and kept under lock and key in a nearby hotel until the time came to put him on the

stand. Judge Dooling made an investigation and still has the case under advisement. [2080—2012]

[Newspaper Clipping from] "**Examiner**," February 10, 1914.

WESTERN FUEL CASE MUST END BY MONDAY.

Court Demands Speedy Finish of Long Drawn-out Proceedings.

Federal Judge Maurice T. Dooling has served formal notice on the attorneys engaged in trying the Western Fuel Company conspiracy case in the United States District Court that they must finish everything by next Monday evening. The court is frankly tired of the long drawn-out trial.

Acting on the suggestion, pointedly given by the judge, the lawyers on both sides held a conference at the noon recess yesterday and offered a faint ray of hope that the taking of testimony might be ended this week.

Judge Dooling has a criminal case on his calendar for next Tuesday. He said that, so far as he was concerned, he would work all day next Thursday (Lincoln's birthday) in order to accelerate the almost clogged wheels of justice.

Last evening Attorney E. J. McCutchen thought that Wednesday evening would see the close of the defense.

The prosecution may put on a number of witnesses for rebuttal and evening sessions in the Federal court may yet be necessary.

Yesterday's court proceedings were consumed in the examination of Professor A. M. Folsom of Stan-

ford University, who testified that he had been called into the case as an expert because Professor J. C. Branner, president of the university and head of the geology department, was away in Brazil last summer and it was necessary to retain Folsom as the acting head of that department.

It was Professor Branner who, when placed on the witness-stand last week, upset the statement of some of the famous Eastern coal experts (all professors), who were hired to testify for the fuel company.

Professor Folsom was followed by George S. Bohart, instructor in chemistry at Stanford, who told of coal analyses he had made for Folsom.

Two former coal merchants were examined—Henry Rosenfeld, whose firm sold its business to the Western Fuel Company in 1903, and H. C. Richards, a general broker, who represented big British coal concerns in this city between 1884 and 1904. These men testified in general terms concerning the occurrence of overages in shipments, handled by them in years past. [2081—2013]

[Newspaper Clipping from] “Examiner,” February 11, 1914.

HE EARNED THE MONEY.

The Western Fuel Company's officials, on trial for swindling the Government by short-weighting coal to escape paying part of the duty, and by over-weighting coal sold to customers, largely rely upon the testimony of Professor Samuel W. Parr to acquit them.

Professor Parr is expected to testify that in the intervals between weighing the coal for Government

information and weighing it again to buyers, the accommodating fuel absorbed the difference in pounds from the atmosphere, taking both oxygen and moisture from that convenient reservoir.

In the course of Professor Parr's examination Tuesday it was brought out that the coal company has been paying him \$25 a day and expenses since last August.

Taking into consideration all the exigencies of the situation, we have no hesitation in admitting that the professor was cheap at the price. [2082—2014]

[Newspaper Clipping from] "Examiner," February 11, 1914.

FUEL MEN TAKE WITNESS-STAND.

Edward J. Smith and Edward H. Mayer Testify in Their Own Defense.

Two of the four remaining defendants in the Western Fuel Company conspiracy trial took the witness-stand in their own behalf yesterday in the United States District Court, Edward J. Smith and Edward H. Mayer, weight tally clerks for the coal concern, testifying that they had never engaged in a plot to defraud the Government out of duties or "drawbacks."

To-day it is expected that James B. Smith, vice-president and general manager of the company, and Frederick C. Mills, superintendent, will be put on the stand.

Edward J. Smith testified that he had nothing whatever to do with taking weights, that he took these figures from the Government weighers, that he

did not take his station on barges when transpacific vessels were being loaded with fuel and that he had never held any conversation with "Dave" Powers in regard to sending checks to R. P. Schwerin of the Pacific Mail Company.

The Government refused to cross-examine him.

Mayer was given a long siege, lasting all the afternoon. He and Special Prosecutor Matt I. Sullivan had repeated tilts in the course of his cross-examination, and Mayer had an uncomfortable time of it trying to explain that it was "only out of curiosity" that he asked the weights of screenings dumped into the barges—a process which he admitted was secret because the coal company did not like to have it generally known that this fine coal was mixed with lump coal.

Mayer's testimony concerning the payment of "overtime" to the Government weighers when they worked at night was the bone of contention between the opposing attorneys, but despite the vigorous objections of the lawyers for the defense, the story went into the record that the weighers for Uncle Sam were regularly paid for their extra work, that they never gave receipts, that their names were not entered in the books, but that they were represented by Mayer's own name, blanketing the entire crew.

[2083—2015]

[Newspaper Clipping from] "Examiner," February
12, 1914.

POWERS' STORY IS CALLED FALSE.

Testimony of Two Brothers Denied by Their Former
Superintendent.

Frederick C. Mills, superintendent of the Western Fuel Company and one of the eight men indicted originally for conspiring to defraud the United States out of duties and drawbacks on duties, took the witness-stand in the trial in the United States District Court yesterday and denied every charge made against him and the corporation.

The chief battle was over the testimony of the Powers brothers, Edwin and David—testimony which the defense is trying to impeach.

Mills denied the testimony of the brothers, that he ever had suggested or ordered any overloading of coal tubs at the bunkers on the waterfront.

Meaning of "*Overcharge*."

His most sensational denial was that the term "overage" meant "anything at all"—that it was just inaccurate bookkeeping. The term "shortage," he said, meant that a barge had been "cleaned up"—nothing more. Mills insisted that the method of handling the coal barges made it impossible for anybody to check up discrepancies in weights such as those claimed by the government.

William Chisholm, marine superintendent for the Pacific Mail Company, was recalled to upset Edwin Powers' story. The best that was obtained from him

was an admission that Edwin, since the opening of the Western Fuel trial, had held a conversation with him, in which Edwin told him that the coal concern people were "guilty," that the books showed it and that J. B. Smith and Mills knew it.

Lawyer on Stand.

Attorney Warren Olney, Jr., one of the lawyers for the defense, took the stand to contradict in many particulars the story told by Edwin Powers in regard to the conversation which he had early in the case with the counsel for the indicted coal barons.

W. H. Tidwell, special treasury agent, also was called by the defense in an endeavor to upset the story told by David G. Powers about his alleged negotiations to get a reward from the Government for his testimony. [2084—2016]

[Newspaper Clipping from] "Examiner," February 14, 1914.

END IS TENSE IN FUEL CASE TESTIMONY.
Last Witness in Coal Trial is Heard While Lawyers
Battle for Every Final Advantage.

James B. Smith on Stand.

Defendant Refuses to Let His Counsel Interpose
Objections to the Government's Questions.

Testimony in the prolonged Western Fuel Company conspiracy trial in the United States District Court ended last evening at 7 o'clock, after a session which lasted for more than seven hours and concluded in a tense situation, with the lawyers on both sides fighting tempestuously for every final advantage.

The two chief witnesses of the day were James B. Smith, vice-president and general manager of the Western Fuel Company, and the only "higher-up" of the eight indicted coal barons to last out the long trial, and Edwin Powers, former assistant to Superintendent F. C. Mills of the coal concern and the witness most feared by the defense.

Smith was put on the stand by the Western Fuel defense after the other defendants who were all employees under him. To the surprise of the prosecution, he proved a good witness and worthy antagonist of Special Prosecutor Matt I. Sullivan.

Smith is Confident.

Smith refused to himself get caught in any of the traps, and so confident was he of his ability to answer the opposing attorneys, he refused to let his own counsel, Stanley Moore, interpose objections to questions propounded him in the course of his cross-examination.

"I'm going to give Mr. Sullivan every chance to interrogate me," he said, although at many crucial questions he said he knew nothing about the topic at issue or else he could not answer for the statements of other witnesses.

Asked about the books of Superintendent Mills, which showed regular and heavy "overages," Smith confessed that he never examined these accounts—hardly realized that they were kept and really paid little attention to what they showed in respect to the constantly enlarged supply of fuel, credited to the coal concern. Mills' reports, said he, never caused

him either surprise or suspicion. In fact, he said, he trusted all his employees, although, as he remarked in the case of "Eddie" Powers, he never made any of these employees his "acquaintances."

Smith was a positive and consistent denier when it came to answering questions about the significance of the much mooted "donation account" of the Western Fuel Company. He said that there was nothing to cause comment about the gifts of coal and money to anybody from R. P. Schwerin, vice-president of the Pacific Mail Company, down to the meanest employee of the steamship concern. It was just "exchange of courtesies," he explained—something which any corporation might do.

Powers Contradicts Smith.

According to Smith, "Eddie" Powers had proved a highly competent understudy to Superintendent Mills until he had been discharged on complaint of Mills in 1911. Smith professed ignorance of the fact that Powers had been ill in a hospital at the time he was accused of staying from his office and neglecting his duties. Powers himself, when examined later, on rebuttal, said that Smith knew of his illness.

Questioned as to his opinion of Powers as a valuable man in the fuel concern, Smith readily admitted that he had called him "a good man," adding that, "if he had taken the advice of his [2085—2017] superiors around our place, he'd still be a good man." Pressed on this point, Smith admitted that when Powers had successfully loaded a boat with "Telegraph Hill rock" instead of coal, he had proved himself "a good man in our business," and he stuck to

this, although the courtroom rocked with laughter.

Ruling Against U. S.

In the final examination of these two witnesses, the Government lost under two important rulings of Federal Judge Maurice T. Dooling. It failed to get introduced as evidence a letter, written by J. B. Smith to the Nanaimo office of the coal company—a letter reported to be very damaging to the defense; and it failed to get into the record testimony from Powers regarding payments, regularly made by Smith, through him, to the engineers of the Japanese liners.

While Smith's testimony closed the case for the defense, the Government flung back a number of witnesses, United States Customs inspectors—all of them testifying against the defense to the effect that coal barges were almost regularly cleared of coal, instead of being partly emptied of their cargoes and then removed on the turn of the tides. The importance of this is that the defense has maintained that barges were not cleaned and that hence "over-ages" could not be correctly estimated.

Arguments in the case will begin Monday morning and according to every expectation, they will be concluded some time Tuesday, at which time Judge Dooling will instruct the jury and leave the final adjudication of the issues to the twelve men who, for two months, have devoted their time to listening to the evidence and the battling of the lawyers.

[Newspaper Clipping from] "Examiner," February
17, 1914.

FUEL CASE MEN WEEP OVER PLEA.

Attorney Moore's Final Appeal Stirs Emotion of
Defendants Edw. H. Mayer and
J. B. Smith.

"Where's Fred Stratton?"

"He Supplied the Defense With Questions, Why
Wasn't He on the Stand?"

Demands Roche.

"Where is former Collector of the Port Frederick
Stratton," asked Special Prosecutor Theodore
Roche in summing up for the people yesterday at
the Western Fuel conspiracy trial in the United
States District Court.

"Why was he not called to the stand when he was
undoubtedly supplying the defense with questions
to ask our witnesses?"

"Were not the Pacific Mail officials on J. B.
Smith's pay-roll from R. P. Schwerin to the lowliest
weigher?"

All Day Argument.

Roche and Stanley Moore, representing the de-
fense, occupied all day yesterday in arguing the case
before the jury, Moore's closing plea causing the de-
fendant, Edward H. Mayer, to sob and J. B. Smith
to wipe away a vagrant tear.

Attorney E. J. McCutchen, for the defense, and
Special Prosecutor Matt I. Sullivan for the govern-
ment, will conclude the arguments to-day, and Judge
Dooling is expected to turn the case over to the

twelve men for their verdict late this afternoon.

“There can be no other verdict than one of guilty,” said Roche. “If there is anything else, the Government will have a right to believe that there has been a miscarriage of justice.”

Roche Cautions Jurors.

Roche warned the jury against accepting the defense's plea, later made by Attorney Moore, that the total percentage of overages and shortages was comparatively small in considering the enormous business done by the Western Fuel Company during the nine years covered by the indictment. He said that while \$45,000, the amount specifically claimed by the Government as stolen through fraudulent weights, might seem small, the total of the alleged thefts from consignees as well as from the United States would be close to \$750,000. It was on this gigantic sum, he said, that the Western Fuel Company was able to declare regular dividends of 10 per cent.

“This,” said Roche, “is always the cry of big business whenever the Government treads on its toes: ‘the amount is so small.’ If it is proved that these defendants conspired to steal as much as one dollar, they should be adjudged guilty. A failure to recognize this would act as an estoppel of all future prosecutions of rich corporations by the United States.”

Moore Scores Roche.

Stanley Moore's plea for the defense occupied the entire afternoon session. It began with an attack on Prosecutor Roche for his alleged “appeal to passion and prejudice” and “his bulldozing tactics”—a

speech which Moore characterized as “an insult to judge and jury.”

After scoffing at some of the minor points raised by the prosecution, Moore brought his appeal to a close with a plea to the jury to give the indicted men what was dearer to them than life itself—vindication of their honor. At this Mayer sobbed outright and Smith showed signs of deep emotion. [2087—2018]

Affidavit of Elliott Johnson [dated March 11, 1914].

[Title of Court and Cause.]

State of California,

City and County of San Francisco,—ss.

Elliott Johnson, being first duly sworn, deposes and says: That attached hereto are the articles, items and editorials printed in the San Francisco Bulletin, a daily newspaper published in the City and County of San Francisco, during the course of the trial of the above entitled cause.

ELLIOTT JOHNSON.

Subscribed and sworn to before me this 11th day of March, 1914.

[Seal]

C. B. SESSIONS,

Notary Public in and for the City and County of San Francisco, State of California. [2088—2019]

[Newspaper Clipping from] “Bulletin,” December 9, 1913.

FUEL TRUST OFFICIALS FACE MUSIC.

Eight Defendants on Trial for Alleged Frauds
Against Uncle Sam.

Charged with swindling the Government for nine years by evading coal duties, “short weighing” fuel

orders and collecting rebates from Uncle Sam on mythical sales of imported coal, eight officials, directors and employees of the Western Fuel Company, indicted on conspiracy charges, were brought to trial before Federal Judge Maurice T. Dooling today.

The defendants, who were present in court to day, were:

John L. Howard, president; James B. Smith, vice-president and general manager; Joseph L. Schmitt, treasurer; Robert Bruce, director; Sidney V. Smith, director; Frederick C. Mills, superintendent; Edward J. Smith, weigher, and E. H. Mayer, weigher.

Information furnished by David G. Powers, former superintendent of the Western Fuel Company, formed the basis of the indictments returned last February. The evidence was gathered by Chief Special Agent of the Treasury William H. Tidwell.

Special United States Attorney-Generals Matt I. Sullivan and Theodore J. Roche are prosecuting the case, while the following legal lights are appearing for the defense:

Peter F. Dunne, Stanley Moore, A. A. Moore, Warren Olney, Jr., A. P. Black, Charles N. Willard, Ira Campbell, Samuel Knight, E. J. McCutcheon, J. R. Pringle, William I. Brobeck, Alexander Morrison and others.

Mission vs. Pacific Union.

From the wrangling indulged in during the examination of talesmen today it is evident that the taking of testimony will not begin until Friday. Judge Dooling is determined to hasten the proceedings, but each prospective juror is made the target of a broad-

side of queries that consume much time. Several jurors have been successfully challenged by Prosecutor Sullivan because of their admitted social and club affiliations with the defendants.

Sullivan displays a special interest in members of the Pacific Union Club, to which most of the defendants belong. On the other hand, Stanley Moore searches every talesman for a trace of the Mission Promotion Association or anything smacking of the Mission.

Joseph G. Gallagher, while being examined, broke the tedium by declaring that though he has been associated with Sullivan for forty years in various ways, "there has been no sociability about our business."

Slangy? Sure Mike.

Stanley Moore disturbed the decorum later by asking Gallagher:

"If Mr. Sullivan made a noise as if he was interested in the outcome of this case don't you think that might bias you?"

Gallagher also displayed some knowledge of slang with:

"That would cut no figure with me."

John T. Gilmartin, manager of the H. S. Crocker Company, whose dealings with State Printer Shannon called Theodore J. Roche to Sacramento to conduct an inquiry, said that he was not prejudiced because of Roche's presence in the case. Then everybody laughed. Gilmartin volunteered the information that he had never had the pleasure of an introduction to Roche. At the noon session Roche

introduced himself.

While the jury impanelment was proceeding the Federal Grand Jury on the floor below were poring over the books and records of the Western Fuel Company, seeking evidence that might substantiate the Government's contention that Pacific Mail Steamship Company officials and former United States customs officials acted in collusion with the "coal trust" to defraud Uncle Sam.

The following have been temporarily passed as jurors in the Western Fuel Case: Martin O'Connell, 1983 Fifteenth street; R. E. Herdman, Palo Alto; Joseph G. Gallagher, 1280 Valencia street; A. Christianson, 85 Second street; John T. Gilmartin, 230 Brannan street.

The case leaped into national notoriety when John L. McNab, then United States District Attorney, resigned, charging that improper influence was being brought to bear at Washington to prevent the case from coming to trial. President Wilson accepted his resignation immediately, but as yet has named no successor. The government's case is being pre-

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sented by Matt I. Sullivan and Theodore Roche, special counsel, who were also retained for the Diggs-Caminetti cases.

The Government's Case.

On the evidence submitted to the grand jury, the government will seek to show that, by an elaborate system of short weights, a three-fold fraud was perpetrated:

First, that on all coal imported, the government was cheated of duties by "short-weighing."

Second, that the government was cheated by short weight deliveries of coal sold to it for the army transport service and other uses.

Third, that the company kept all engineers of the Toyo Kisen Kaisha and many engineers of the Pacific Mail Steamship Company on a secret pay roll, in return for their consent to accept short weight fuel supplies, which the companies paid for at full weights.

In this way the government estimates that it bought coal which it never received worth \$500,000 at wholesale prices and more than \$1,000,000 at retail prices; that there were similar huge profits from private customers, and that on all coal, to whomsoever sold and whether at full weight or short weight, the government was cheated of a lawful share of its customs dues.

Frauds Explained.

Testimony heard by the grand jury explained how these alleged frauds were accomplished. Summarized, this testimony was to the following effect:

The company owned its own mines and colliers. These colliers tied up along the company's pier to discharge. The coal was lifted from the hulls in mechanically operated scoops and dumped into tram cars, which ran on a skeleton trestle to the scales.

Each car was filled heaping full—so full that a large proportion of the last bucket of coal always slipped off the heaped carload and slid through the

open trestlework into the company's pockets. This spilled coal escaped duties.

In continuing to the scale, the car passed under a jutting beam, adjusted to such a height that it wiped off the load level with the car sides, and again the spill slipped into pockets below.

Then, when the car finally reached the scales, there was a support beneath the scale platform which checked its descent at a predetermined level. In addition, it was possible to shift the barrow of the car backward or forward on the truck, so that only a portion of its weight would register.

After the coal had all been dumped for storage into the pockets, which stood high above tide level, it was poured through chutes, as wanted, into barges, which were towed to the transport docks or alongside whatever ship was waiting to be coaled. From the barges it was again hoisted inboard by dredge buckets.

Buckets Half Empty.

A tally of these buckets was kept, four out of every sixty were weighed, and from these weights an average was struck which it was agreed should be charged in the reckoning as one bucketful.

But the government contends that, whenever a bucket to be weighed was loaded, it was filled to the brim under the personal direction of the foreman, whereas, between weighings, buckets often came so light that the bottom could be seen between lumps of coal.

Of course, such bare-faced frauds could not pass unreported without the connivance of the purchaser's

employes and Government employes, and the testimony heard by the grand jury was that the fuel company paid a regular percentage of its gains to those who winked at them.

A record of these overcharges is shown on the company's books, it will be argued, and the directors and officers passed in statements showing the overrun on incoming cargoes and the underrun to army transports and American bottoms. On this showing the government asks for the conviction of the directors, as well as the weighers and officers, alleged to be physically responsible. [2089—2020]

[Newspaper Clipping from] "Bulletin," December 15, 1913.

DOES THIS SOUND LIKE "FINNIGAN"?

Attorney for Indicted Fuel Officials Tells of Antics of Coal.

**Changes in Weight Attributed to Climate.
Government Puts on Its First Witnesses and the
Jury Hears Testimony.**

The original "on agin', off agin', gone agin' Finnigan," bobbed up today in the coal fraud cases on trial in the United States District Court.

It popped suddenly out of a paper read by Attorney Warren Olney to the jury in Judge Dooling's court, in his outline of the defense of the eight officials and employes of the Western Fuel Company, on trial for conspiring to defraud the Government.

In this paper it was held that the weight of coal in transit here from foreign ports shrinks 1 per cent, the shrinkage being due to the action of the elements.

On the other hand, Olney's paper read, the same coal increases in weight 5 and 6 per cent after it has been unloaded here. This Finniganization of coal, the paper states, is caused by the humidity. Oxidization, after the coal gets here, also causes a weight increase of from $\frac{1}{2}$ to 1 per cent.

Cites Government Experts.

"We are prepared to prove these conditions with the testimony of scientific experts," declared Olney. Then he mentioned two Government coal experts, Porter and Fielder, who, he said, knew by experiments that his words were true.

"But," he continued to the jury, "you can rest assured that they will not be summoned here by the prosecution."

Here Special Prosecutor Theodore J. Roche broke in with: "It will not be necessary to call either gentleman to prove the Government's case."

Other methods of alleged fraud charged to the defendants in the matter of manipulation of weights were dismissed by Olney as trifles of carelessness on the part of the customs officials or as having been due to unavoidable accidents.

Prosecutor Matt I. Sullivan in the government's opening statement said that he was prepared to prove, in substance, as follows:

The Government's Case.

That the government was swindled out of import duties on coal from April, 1904, to February, 1913, by false weighing, which would result in nearly every instance in a shortage of about 500 tons in a

cargo that was weighed at the foreign port at 5000 tons.

That false affidavits were made concerning the weights of cargoes to the customs authorities, and that the government was inveigled into paying rebates on this "shortage" when it was sold to American ships.

That, by manipulation of the scales, government was "short-weighted" on fuel orders for transports placed with the Western Fuel Company.

That the defendants were all aware of the fraud, three actively engaging in it, while five, as directors, were cognizant of it through financial reports which showed clearly in a special account just how much profit accrued from the nefarious practice.

Paid for Winking.

That every engineer of the Toyo Kisen Kaisha Steamship Company was kept on the payroll of the Western Fuel Company to wink at the short weights whereby their own employers were cheated out of thousands of dollars.

That certain customs officials and army and navy officials received presents of money and coal from the Western Fuel Company for their help in the successful operation of the frauds.

Sullivan declared that the Government would prove that the Western Fuel Company had sold 66,000 more tons of coal than its books show that it bought. The defense admitted that 61,000 tons are in this category, leaving the explanation of the problem to their scientific experts and some of it to carelessness and unavoidable situations.

Treasurer Joseph L. Schmitt, a defendant, has been excused from attending the proceedings on the ground of chronic illness. All witnesses, with the exception of Chief Special Agent Tidwell, who gathered the evidence, and Secretary Norcross of the

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fuel company, have been excluded from the courtroom.

First Witness Called.

The first witness called by the prosecution was Hugh Donegan, a surveyor, who gave the jury a mental picture of the arrangement of the Folsom street bunkers, where much of the alleged weight manipulation is said to have been done. Then followed Secretary Norcross to establish the relations of the defendants with the Western Fuel Company, and to explain the business methods in vogue at the docks of the company.

The books and records of the fuel concern will next be produced and special agents under Chief Tidwell will take the stand to point out what evidences of alleged fraud they found in the books of the "coal trust."

In a tilt between Counsel Olney and Roche regarding Olney's falling into argument before the jury in presenting an outline of the defense, the court remarked.

"The jury will probably forget all about the argument before a month has passed." Roche agreed that it was probable and withdrew his objection with a smile. [2090—2021]

[Newspaper Clipping from] "Bulletin," December
16, 1913.

FRAME-UP, DECLARES PRISONER.

U. S. Grand Jury Called in Special Session to
Investigate Story.

More Than Woman in Case, Says Accused.

His Brother Declares He Has Sensational Story
to Tell.

A special session of the United States Grand Jury was hurriedly called at noon today by Special Prosecutor Matt I. Sullivan to investigate a story that had reached him that there was a conspiracy afoot to discredit government witnesses and retard justice in the trial of the "coal fraud" cases, in which eight officers of the Western Fuel Company are defendants.

The information that such a conspiracy was afoot reached Prosecutor Sullivan a short time after the arrest of David G. Powers on a charge of contributing to the delinquency of Miss Amelia Cadruff, who resides at 50 South Park street. Powers was a former superintendent in the employ of the Western Fuel Company, and is one of the government's star witnesses for the present trial.

Four months ago Miss Cadruff made a complaint against Powers, but was denied a warrant. Today, through her attorneys, she was granted a warrant by Police Judge Crist, and Powers was placed under arrest. In Miss Cadruff's first application for a warrant she alleged that Powers, although a married man, had promised to marry her.

"Frame-up," He Says.

When taken into custody, the prisoner smiled and

declared: "This is a frame-up. The Western Fuel officials may figure that my arrest will strengthen their case, but they are figuring without the Government attorneys, who have been anticipating their move. This will prove a boomerang. I'll be exonerated, and the scheme exposed. I know who is behind this play, and I will show my hand when the proper time comes. I am absolutely innocent of this charge, as was proven once before, when the warrant was denied. Miss Caduff's 'friends' were willing to call her off several months ago if my father would pay her one thousand dollars."

Edwin Powers, a brother of David G. Powers, said after he had heard of the arrest:

"That's the last straw. I am ready to tell my story now. The case of the Western Fuel Company directors is practically decided now. You might say that you saw me making frequent visits lately in company with Secretary David C. Norcross to the offices of Olney, McCutcheon & Olney. I'll tell what I went there for in the courtroom."

Archie Johnson, son of Governor Johnson, handled the Government's end of the Powers case today, while Prosecutors Sullivan and Roche were busily engaged in examining witnesses in the coal fraud case.

Among those subpoenaed for the Federal grand jury investigation this afternoon are Miss Caduff, her father, David Powers, the girl's attorneys and J. R. Pringle, Sidney V. Smith Jr. and Edgar Peixotto.

David Powers was bailed out immediately upon his arrest in bonds of \$5,000.

FUEL SECRETARY ON WITNESS-STAND.

David C. Norcross, secretary of the Western Fuel Company, occupied the witness-stand today in the trial of the eight officials and employes of the "coal trust," accused of defrauding the Government of import duties and by shortage on fuel orders.

(Continued on Page Two.)

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Norcross is the only official of the company who escaped indictment. He gave valuable testimony to the Federal grand jury that investigated the alleged frauds.

Special Prosecutor Theodore J. Roche conducted the examination of Norcross, which was for the purpose of laying a foundation for the Government's case. He identified the relations of the defendants with the Western Fuel Company.

Location of Mines.

In answer to Roche, the witness then described to the jury the location of the company's mines; the duties of its various employes; its methods of weighing at various points; the location of its various wharves and bunkers; the names and character of the barges and ships owned by the company, and a wealth of data and information concerning the company's affairs that Roche considered necessary for the enlightenment of the jury, that will probably be engaged with the trial for six weeks.

Norcross also identified books and records of the Western Fuel Company, which have been in the possession of the Government. When shown the minutes of Western Fuel Company directors' meetings

and financial reports made to the directors, he identified them as genuine.

Aware of Frauds.

With all these documents, Prosecutor Matt I. Sullivan declares the Government will prove that the accused officials were aware of and countenanced the alleged frauds for nine years. Monthly sheets submitted to the directors, showing, the Government claims, the amount of "overruns" and the company's coal, were also identified by Norcross.

Hugh Donegan, a surveyor, who explained to the jury with diagrams, the construction of the Folsom street bunkers, where most of the alleged short weighing was done, preceded Norcross for a few minutes on cross-examination by Attorney E. J. McCutcheon.

McCutcheon suggested to the court that the jury be taken over the property being described, saying that a shipload of coal would be distributed for their benefit to show the workings of the weighing system in vogue at the bunkers. But Prosecutor Roche objected to the proposed trip, declaring that he would prove that conditions are different at the bunkers now than they were before the indictments were returned. McCutcheon's invitation was turned down. [2091—2022]

[Newspaper Clipping from] "Bulletin," December 17, 1913.

GIRL NOT IN COURT TO ACCUSE POWERS.

David G. Powers, witness for the Government in the coal fraud case, appeared in Judge Crist's court this morning to be arraigned on a charge of statutory offense, preferred by Miss Lena Caduff.

But Powers was not arraigned and instructed by the court, for the reason that neither the girl nor her attorneys, who had secured the warrant against Powers, were on hand in court.

Attorney Edward I. Barry, from the office of Sullivan, Sullivan and Roche, appeared in defense of Powers. Morris Oppenheimer, prosecuting attorney in Judge Crist's court, declared he knew nothing of the nature of the charge.

Barry then stated to the court that there were unusual circumstances in the case which would probably convince the court that the bail of \$5,000 in cash, as

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set in the warrant, was exorbitant.

He asked that the bail be reduced, since the defendant was a witness before the Federal court.

Judge Crist replied that in charges of this nature he did not ordinarily consider \$5,000 bail too high. He was not aware, he said, of the alleged extraordinary features in the case, but on proper showing he might be willing to reduce the bail.

Prosecutor Oppenheimer, turning to Barry, asked:

"Are you willing, as representing Sullivan, Sullivan & Roche, to guarantee the appearance of this defendant in court to answer the charge against him at any later date?"

"Certainly I will guarantee his presence," said Barry.

Oppenheimer then stated to the court that he concurred in the request for reduction of the bail. Judge Crist lowered the figure to \$2000 cash. The

arraignment went over one week.

After the arrest of Powers last night, his brother, Edwin A. Powers, former assistant superintendent of the Western Fuel Company, declared:

“My brother is being made the victim of a contemptible frame-up.”

He also declared that he would now go on the stand for the Government and tell unreservedly everything he knew. Heretofore he has been a somewhat reluctant witness for the prosecution.

FOG DELAYS TO-DAY'S SESSION OF TRIAL.

The trial of the eight officials and employes of the Western Fuel Company, charged with conspiracy to defraud the United States was delayed this morning by the absence of Juror Fred Becker, an Oakland butcher. A recess was ordered awaiting Becker's appearance. At 10:35 o'clock he rushed into court and said he was delayed by the fog on the bay. Judge Dooling accepted his excuse.

Prosecutor Theodore J. Roche called customs inspectors at Seattle to the witness-stand. They made a secret investigation at the Nanaimo mines of the Western Fuel Company in British Columbia, for the purpose of ascertaining the weighing system operated there. The witnesses, in detail, explained the methods of weighing coal practiced at the mines. The Government expects to show that shipments of coal from the mines “decreased” in weight to a degree even beyond that of “evaporation,” as explained to the jury by Attorney Warren Olney Jr. in his opening statement.

David C. Norcross, secretary of the Western Fuel

Company, the only official of the "coal trust" who escaped indictment, next took the stand. Special Prosecutor Roche will engage Norcross for the major portion of today's session for the purpose of laying a foundation for the government's case.

Norcross' testimony was concerned with the business methods of the Western Fuel Company.

At the opening of court no mention was made of the arrest in the Federal building yesterday of David G. Powers, one of the government's main witnesses.

Attorneys for both sides decline to make any statements about the Powers sensation, declaring that it was now a police court matter, and none of their affair. The Federal Grand Jury is still investigating.
[2092—2023]

[Newspaper Clipping from] "Bulletin," December 18, 1913.

COAL TRUST PROFITS BY OVERRUNS

Secretary Testifies at Fraud Trial; Edward Powers
Changes Mind.

David C. Norcross, secretary of the Western Fuel Company, gave some interesting bits of testimony as a reluctant witness for the Government to-day in the coal fraud trial. The company's books showed that from 1905 to 1911, inclusive, quarterly dividends were declared at $2\frac{1}{2}$ per cent.

For 1912—the period covered by the alleged "frauds" against the Government—the quarterly dividends swelled to $17\frac{1}{2}$ per cent. Norcross also admitted that the books showed a profit of \$21,000 from "overruns."

Report in the Federal building here to-day has it that Edwin Powers, brother of David G. Powers, a witness for the Government in the trial of the Western Fuel fraud case, will not testify against the defendants as he declared publicly he would do after the arrest of his brother, David, on complaint of Miss Nina Caduff.

Edwin Powers was formerly an official of the Western Fuel Company. Before the Federal Grand Jury, which returned the indictments against the eight officials and employees of the fuel company now on trial on charges of defrauding the government, Edwin Powers proved a very recalcitrant witness. The government authorities claim that he was in possession of secrets which would substantiate the allegation of the authorities that the eight defendants on trial were culpable of cheating Uncle Sam by means of evasion of customs duties and short weighing of government fuel orders.

Edwin Powers declared, after the sensational arrest of his brother David, on charges of contributing to the delinquency of a minor girl, that he had determined to tell all that he knew concerning the alleged fraudulent methods of the "coal trust" on the witness stand in Judge Dooling's court. Following his public statements, Prosecutors Sullivan and Roche interviewed Powers, with the result that he had "nothing to say."

At the trial to-day of the coal fraud cases David C. Norcross, secretary of the Western Fuel Company, was put on the stand to supply information concerning the business methods of his employers, con-

sidered by Prosecutors Sullivan and Roche as essential to the establishment of the government's case.

Chief Special Agent of the Treasury Department William H. Tidwell will follow Norcross on the witness stand. He will report to the jury the findings of government expert accountants, who have examined the books and records of the Western Fuel Company. Tidwell, who has been in charge of the gathering of all the government's evidence in the case, expects to show through the books of the "coal trust" that the defendants actively participated in the alleged fraud against Unce Sam.

To-morrow David Powers and Edwin Powers are scheduled to be called to the witness stand.

William Bunker, former chief engineer of the Pacific Mail Steamship Company's liner Manchuria, will follow the Powers boys on the stand. He testifies at the grand jury proceedings that his fuel orders had been "short-weighted" several hundred tons on various occasions. The prosecutors hope to show through Bunker that the government was cheated of rebates on coal that not not delivered.

Minutes of the board of directors' meetings from 1905 to 1913, inclusive, introduced in evidence, showed that thirty-six dividends were declared in this period at $2\frac{1}{2}$ per cent.

During 1912 quarterly dividends of $17\frac{1}{2}$ per cent were declared by the Fuel Company, according to the testimony of Secretary Norcross.

Norcross told of \$21,000 obtained as profits from the "overruns."

An "executive committee," which is a part of the business workings of the Western Fuel Company, proved a bone of contention at today's proceedings. Prosecutor Roche tried to draw from the witness, Norcross, the personnel of this committee in vain. Norcross, though admitting that there was such a body, said that he did not know the names of the men who composed it. [2093—2024]

[Newspaper Clipping from] "Bulletin," December 19, 1913.

ALL COAL MEN DO IT, ASSERTS ATTORNEY MOORE.

Counsel for Indicted Fuel Officials Says "Overrunning" Is Universal.

In the trial of eight directors and employees of the Western Fuel Company on a charge of defrauding the Government before Federal Judge Dooling this morning, Stanley Moore, attorney for the defense, declared:

"If over-runs constitute fraud, I can say now that every man in the coal business in the United States is guilty of fraud."

The statement was made during the cross-examination of Secretary David Norcross of the Western Fuel Company. The system of computing overages was a main subject of dispute, the defense endeavoring to show that they were figured on the basis of weighing done by the custom-house officials.

Moore drew from Norcross a statement that water had been piped into a pile of 5000 tons of coal merely for the purpose of preventing spontaneous combustion.

Prosecutor Roche intimated that he may endeavor to gain access to the books of the Western Transport Company, a barge concern, which did the carrying for the Western Fuel Company. He drew out from Norcross the facts that the directorate of the two corporations was practically the same, and that Norcross was secretary of both.

The Federal Grand Jury this afternoon took up the investigation into the charges brought by Miss Lena Caduff against David Powers, an investigator for the government. The prosecution holds that there were peculiar circumstances in the bringing of this charge.

Edwin Powers, brother of David Powers, at first declared the charge was a "frame up" and said he would now testify freely in favor of the prosecution. He was to have conferred with Prosecutors Sullivan and Roche last night, but was not on hand.

Norcross' testimony concluded at noon. The prosecution's next witness is Special Agent of the Treasury Tidwell, who will furnish abstracts of the information gleaned from the Western Fuel's books.
[2094—2025]

[Newspaper Clipping from] "**Bulletin,**" December 23, 1913.

DEFENSE IN COAL "FRAUDS" IS OUTLINED.
Indicted Officials to Base It on Small Percentage of
Government Loss.

Indicted officials and employes of the Western Fuel Company will rely for the defense in large measure on the fact that out of the million odd dollars paid in duty on coal during six years the gov-

ernment lost only about \$12,000. Such was the substance of a declaration made to-day by Attorney Stanley Moore for the defense.

Special Prosecutor Roche had referred to the fact that the attorneys for the defense were continually harping on the small percentage of coal shortage in respect to the immense amount handled. He declared that it made no difference what the percentage was, if shortage were shown.

“ The defense objects to the statement that the percentage has no bearing on the matter,” declared Attorney Moore. “ We contend that, when it is shown that the difference represents only about 1 per cent on the volume of business transacted, it will appear ridiculous to say that any conspiracy existed. The matter of percentage is all-important.”

Before the trial of the Western Fuel officials is ended the prosecution will attempt to show that the amount of draw back obtained from the Government for duty paid on coal amounted to 6 per cent more than the amount of duty paid on the same coal, according to Special Prosecutor Roche. Reduced to figures, obtained from the books of the defendant Mills by W. H. Tidwell, who was on the stand this morning, on one barge load of coal, the Government paid a draw back on 66 tons 1200 pounds more coal than had been loaded on the barge in the first place. In other words, the Government refunded duty on more coal than duty was paid upon in this case. These figures were not disputed by the defense.

According to figures adduced by the Government attorneys to-day, based on every cargo which showed

a shortage during the six years under investigation, barges handling Western Fuel Company's coal to this port discharged 33,223 tons more coal than had been loaded into them and more than duty had been paid upon.

The trial will be continued until next Monday, after the end of to-day's session. [2095—2026]

[Newspaper Clipping from] "Bulletin," January 5, 1914.

SAYS THE COAL COMPANY KEPT A SANTA CLAUS.

Western Fuel Real Generous About Christmas Time, Declares Witness.

The Western Fuel conspiracy trial, in which eight directors, officers and employes of the coal company are accused of conniving to cheat the United States out of customs duties and "drawbacks" on duties paid, was resumed this morning before United States District Judge Maurice Dooling.

William Chisholm, marine superintendent of the Pacific Mail Company, took the stand and identified the names of seven employees of the Pacific Mail Company who are alleged by the prosecution to belong to the "donation account" of the Western Fuel Company—men who are alleged by the prosecution to have received gifts of money or coal.

These names are Captain Anderson, Chief Engineer Allen of the Asia, P. McCarthy, assistant treasurer of the Pacific Mail Company; Captain Wilson, the boss stevedore; Harry O'Day, B. P. A. Hartnett assistant manager of the Japanese line; J. W.

Hauxhurst, marine superintendent of the *Asia*, and J. J. Creighton.

Chisholm acknowledged that he himself has received gifts from the Western Fuel Company of money and coal, about \$50 in cash each Christmas since 1908, and also gifts of coal, a ton or two each year.

Chisholm said that he always received the "Christmas donation" from Superintendent Edward F. Mills; and that he also ordered the coal through him whenever the need arose in his household.

It was brought out on cross-examination that as early as 1907 Chisholm, in his position of marine superintendent, was indirectly informed that the Western Fuel Company was "over-weighting," and that on two occasions he was directly informed that this was the cause.

Once, in a letter, Chief Engineer Hamilton of the *Siberia* stated that during the trip from San Francisco to Honolulu he had to raise the log seven tons a day to make up the amount charged. Again, in a letter, Chief Engineer Bunker of the *Manchuria* reported a shortage of 123 tons. Chisholm said that he made some investigation of the matter, but could find no proof that the coal company was over-weighting. He acknowledged, however, that he never at any time had attempted to find out at what weight coal was loaded on the barges. [2096—2027]

[Newspaper Clipping from] "Bulletin," January
7, 1914.

FUEL FIGURES PROVE PUZZLE.

"Supposition Seems to Be That Court and Jury
Can't Understand," Says Court.

"This case seems to be conducted on the supposition that neither the court nor the jury can understand anything about it." So Judge Maurice T. Dooling patly characterized the progress of the Western Fuel cases now on trial in his court this morning.

The cross-examination of Special Agent Tidwell, concerning his method of arriving at results in his investigation into the ways of the "coal trust" was continued; especially as to his method of determining the percentage of overages, that is over-weight of coal, alleged to have been brought about in the operation of loading coal on to barges from the bunkers and the loading of the ships from the barges. These percentages of overages entered largely into the exhibit put in evidence by the Government and Attorney E. J. McCutcheon spent the morning in an effort to break down before the jury the technical accuracy of the United States special agent. [2097—2028]

[Newspaper Clipping from] "Bulletin," January
8, 1914.

MARE ISLAND HEAD ON FUEL CO'S GIFT
LIST.

Commandant Received \$100 Bonus, Is Testimony in
Coal Fraud Trial.

A list of beneficiaries of the Western Fuel Com-

pany, to the extent of donations of free coal, was introduced in evidence at the trial of the eight indicted officials of the company yesterday. The list proved surprising, in that it contained the names not only of coal weighers and stevedores, but also of United States army officers and customs employes. Major Grant, U. S. A., is down for \$30 worth of coal on one occasion, and \$24 worth on another. E. Farmer, former clerk to Collector Stratton, is said to have accepted \$8 worth of coal in 1907. J. Twigg, H. Freund and D. Finnegan, Government weighers, are all on the company's books for gratuities of coal. The other names on the lists are employes of the Pacific Mail or of the Toyo Kisen Kaisha—W. Chisholm, J. W. Hauxhurst, P. H. McCarthy, Captain Wilson, J. Crichton and B. A. Harnett.

The prosecution contends that all these recipients of free coal from the company, from stevedore to army officer, knew of the frauds that are alleged to have been perpetrated on the Government, particularly through the method of short weighing, and that they knowingly accepted a ton or two now and then, as a sop for silence.

The prosecution made a desperate effort to have introduced in evidence vouchers from engineers of the Toyo Kisen Kaisha, showing that these officers had received regular payments from the coal company of a few cents a ton on all coal used on their boats; all of which coal the Government contends was regularly short-weighted.

That the commandant of Mare Island Navy Yard in March, 1910, received a bonus of \$100 from

the coal company, was a bit of information introduced into the evidence by the prosecution this morning during the continued examination of United States Treasury Agent Tidwell, who identified a voucher of the coal company to this effect.

The defense tried to suggest to the agent that the donations on the now famous list of the "coal trust" were to charity. Mr. Roche said that he had often heard that "charity covers a multitude of sins," and was perfectly willing for the witness to admit that "it is presumed some of the donations went to charity." Whether or not the Mare Island commandant came under this head was not brought out.
[2098—2029]

[Newspaper Clipping from] "Bulletin," January
9, 1914.

COAL CABARET DESCRIBED BY DAVE POWERS.

Witness Says That Weigher Used to Entertain
Japanese Engineers.

A wily weigher was Edward J. Smith, according to the testimony of David Powers in the Western Fuel case this morning.

"Smith was always telling me what a great weigher he was," said Powers. "When coal was being discharged from the barges into the steamers of the Toyo Kisen Kaisha, he would take the Japanese assistant engineers into the cabin and sing songs to them by the hour."

The picture of the debonair Mr. Smith fascinating an amazed group of oily little yellow men with song, in the ship's cabin, while the alleged business of

short-weighing of coal by his company was going on in the hold, brought a welcome laugh into the staid investigation into the methods of the coal trust now going on before Judge Maurice T. Dooling.

Powers gave a picturesque account of the manner of discharging coal at night. He described the intense gloom in which this operation was carried on, with the three or four pale lanterns to throw light upon the tubs being hoisted, with but three or four lumps of coal in each, instead of the full weight that went on the scales. He said that the custom-house weigher at night used to take his position alongside the boilers or in the cabin to keep warm and to keep clean.

Powers also said that he had often spoken directly to Edward J. Smith, to the defendant Mayer, and to Frederick Mills about fraudulent weighing and that all of these gentlemen had told him in various ways to "shut up."

He explained why it was that the Japanese engineers of the Japanese steamers were paid money, while the white engineers had to content themselves with a meager allowance of coal. He said that Edward J. Smith explained that the "good fellows only get a ton of coal."

The cross-examination of the witness was undertaken by Stanley Moore. Powers denied that he had ever told any representatives of any newspaper that he was to receive a large reward for his information for the Government against the Western Fuel Company—"enough to make him independent for life"—but admitted that somebody, whom he did not re-

member, had informed him that there is a United States statute which provides, under certain conditions, for the payment of money to anyone rendering such service to the Government as it may turn out that Powers is rendering. [2099—2030]

[Newspaper Clipping from] "Bulletin," January 12, 1914.

POWERS MAKES CORRECTION IN HIS
TESTIMONY.

Western Fuel Witness Admits Hearing of Possibility
of Remuneration.

David Powers, the young witness for the prosecution in the Western Fuel case, seems to be a size smaller than Saturday, when he took the stand to continue the testimony against the directors and employees of the coal company, now on trial before Judge Dooling, for fraud against the United States Government.

The effects of the nervous strain of the hammering cross-examination to which he was subjected last Saturday and which he realized was before him to-day were evident in the whole manner of the witness, and he startled the Court by asking if he might correct certain statements which he made Saturday on the ground that he was thoroughly confused, which was very apparent.

Powers acknowledged that Mr. Kidwell, the State treasury special agent, had spoken to him concerning the possibility of receiving a percentage of the fine or recovery of the civil suit against the Western Fuel Company.

The defense, in order to impeach the motives of

Powers in giving testimony, followed up his acknowledgment by recalling the fact that he was aware of a sugar case in Philadelphia where a large fine was recovered by the Government and where the informer received a big percentage. [2100—2031]

[Newspaper Clipping from] "Bulletin," January 13, 1914.

CUSTOMS MEN BLAMED FOR SHORT WEIGHT.

Fuel Men Shifted Responsibility for Shortages, says Powers.

"As the records in Mr. Mills' office show, there was more coal regularly weighed out of the barges than was weighed into them. There was an average in 95 per cent of the cases." This was the definite testimony of Edward Powers, for twelve years an employe of the coal company, in the Western Fuel case this morning.

Edwin Powers is the brother of David Powers, whose testimony against the coal barons has just been completed. His evidence has been awaited with peculiar interest, for up to the very minute that he took the stand this morning he has refused to make any statement whatsoever as to what he would or would not testify to, for or against his former employers. He proves a poised and intelligent witness, and the evident and sincere reluctance with which he tells facts derogatory to the men with whom he worked for many years adds weight and impressiveness to his testimony.

Not only did Edwin Powers finally testify to the

fact of overages upon the coal barges as a regulation thing, but, when thoroughly questioned, he admitted that "The method of weighing—the custom's weighing—made these averages possible. A large part of the average was due to the fact that more coal went into the tubs that were weighed than went into the tubs that were hoisted when no weight was being taken."

The last four years of Edwin Powers' employment by the coal company, he enjoyed a position of considerable confidence as assistant to Frederick C. Mills, the superintendent—now one of the defendants. During this time he was in touch with the diary or dock book kept by Mills; and it is from the records of these books kept by the Western Fuel Company that he testified to the fact of averages in 95 per cent of the barges loaded and then unloaded.

Powers admitted that he had had, in his position of assistant superintendent, "quite a few complaints concerning shortages of coal from Pacific Mail engineers." When asked how often these complaints disturbed the calm of the Western Fuel superintendent's office, he said that the engineers had a habit of complaining "whenever they would catch me—whenever I didn't see them coming."

When urged to give whatever answer he or Superintendent Mills could make to these complaints by liner engineers, Powers said:

"I told them we were selling coal by weight, and that the United States customs was weighing it. And this was a true excuse, because Government weighers were weighing the coal, and Government

weighers were not kicking.”

He named William Bunker of the Manchuria, Thomas Sullivan of the Mongolia, Sawdeen of the same ship, and Hamilton of the Siberia as some of the engineers who had complained to him about short weight of coal. [2101—2032]

[Newspaper Clipping from] “Bulletin,” January 14, 1914.

WITNESS TELLS OF INTERVIEW WITH FUEL MEN.

That David Norcross, Secretary of the Western Fuel Company, during the time that the company was under investigation by the Grand Jury, made an appointment with Edwin Powers to take him to the office of the attorneys for the coal trust, and that Norcross did, in fact, take Powers fresh from the Grand Jury room, and when Powers was still under subpoena as a witness, to the office of these attorneys to confer with them, was the startling testimony brought into the case of the coal barons this morning.

Edwin Powers, who for four years was assistant to F. C. Mills, superintendent of the company, one of the men now under indictment, was on the stand having successfully weathered a cross-examination at the hands of Stanley Moore.

Boomerang for Defense.

The defense had been—disastrously to themselves—trying to impeach the testimony of the witness by having him testify to a visit he had made to the office of McCutchen and Olney, lawyers for the defense. *The* Theodore Roche took the stand and told him to tell the Court under just what circumstances

he had made this visit, and at what time.

“I was standing out in the corridor of the hall here,” Powers said, “during the time the Grand Jury was in session, when Mr. Norcross came up to me and said: ‘Eddie, come on over and have a glass of lemonade.’ We went over and had the lemonade, and then Mr. Norcross asked me to go down to the office of the attorneys for the coal company and explain about the overages. The next day he took me down there, and when we were going up Norcross said to me, ‘Eddie, I was speaking to Mr. Smith about you—James B. Smith—and I wish I could tell you all the fine things J. B. Smith says he is going to do for you.’ When we got to the office of McCutcheon and Olney they were all sitting there—Mr. Moore, Mr. McCutcheon and Mr. Olney. Mr. Norcross took a seat and there was a place already for me in the middle of them.”

Powers is a Good Witness.

To every question put by Moore, the witness had a quick and frank answer, that instead of serving in any way to weaken his direct examination given yesterday against the Fuel Company, it strengthened it at every turn.

When asked if Tidwell, the State Treasury special agent, had not spoken to him concerning the possibility of his receiving reward for his testimony for the Government, Powers answered:

“I told him he or the United States Government or anybody else couldn’t make an informer of me. He never approached the subject again.”

When asked if he was sincere in making this visit

to the lawyers for the defense, Powers retorted: "I was as sincere, Mr. Moore, as you were in asking me to go to your office."

Ordered to Underload.

In answer to a question as to whether any of the members of the Western Fuel Company had ordered him to bring about the averages that show in the books of the coal company, and that form one of the accusations of fraud for which the company is now standing trial, Powers said:

"F. C. Mills told me, on the transport dock, to underload the tubs."

The defense then tried to make the witness refuse to say that he himself knew that there was anything wrong in the method of weighing pursued by the company, but the witness came back with this:

"There was always an average on the barges of from 10 per cent to as high as thirty-five per cent. This shows conclusively that it was fraudulent, didn't it?" [2102—2033]

[Newspaper Clipping from] "Bulletin," January 15, 1914.

SPILLED COAL NOT WEIGHED, SAYS
WITNESS.

Motorman on Folsom Bunker Run Tells How Fuel
was Discharged.

John W. Smith, special customs agent, for some time employed by the Government to look into the methods of weighing at this port pursued by the Western Fuel Company, now under indictment by the Grand Jury, took the stand this morning and told what he saw on several visits to the company's bunk-

ers when coal was being loaded or discharged.

Smith's testimony covered about the same ground as that given by David Powers, who, when a customs agent, accompanied Smith on these tours of inspection.

Smith testified to watching the coaling of the Korea at night from a place of vantage on the captain's bridge, where he observed that the tubs that were weighed were well filled, while those that were not weighed were sometimes but half full. He said that there were but two rounds of weight taken in five hours. He watched the liner being coaled the next day, and noticed that the buckets were better filled in the daytime than at night. He testified to going to the Folsom-street bunkers, where he saw four cars filled and run over the scales without any weight being taken.

Fifteen minutes before court adjourned this noon, Joseph Waterdoll took the stand. For six years Waterdoll was employed by the fuel company as a motorman on the run at the Folsom Street bunkers. For eight years previous to that he worked for the Dunsmuir people in the same capacity, until their property was taken over by the Western Fuel. Waterdoll testified that when the Dunsmuir people were in charge the floor of the runway was planked so that any coal that might spill was held, loaded back into the cars and weighed, but that, with the installation of the Western Fuel Company, the planking underneath the hoppers was removed, so that all coal spilled dropped into the bunkers below and was never weighed.

Waterdoll said that this spilling of the coal was brought about by the cars being overloaded, when the force of the weight above the gate in the hopper kept the men from shutting off the fall of coal at the right time.

Waterdoll further testified that whole cars were sometimes discharged without being weighed at all; that he had served as dumper and motorman at such times, and that he had received orders to dump the cars without weighing from Edward Mayer. [2103—2034]

[Newspaper Clipping from] "Bulletin," January 19, 1914.

WITNESS SAYS "WINK" FILLED COAL
BUCKETS.

Shoveler Testifies That Men were Signaled When
to "Overload."

The Government strengthened its case against the Western Fuel Company this morning, through the testimony of employees of the company who had worked in the coal when it was being weighed.

Jim Balestra, once a coal shoveler for the Western Fuel Company, now a gardener on the D. O. Mills estate, was an interesting witness this morning. He not only testified that the shovelers overloaded buckets, but that they did so because they were signaled so to do by a "straw boss" of the fuel company. This boss was the hatch-tender and his signal was a wink—the "wink being given" when, as the shovelers were unloading a barge into a ship, the custom officer would come up to take weights. Upon this, Baleston testified, the "shovelers would go to work

to put on as much coal as they possibly could—fine coal, at that, because it weighed more.”

When no weight was to be taken, Baleston said, the buckets were filled “any old way.”

On cross-examination, E. J. McCutcheon for the defense seemed to find this matter of “giving the wink” a very delicate point, and questioned the witness at length concerning the respective positions of all parties implicated during the time the wink was alleged to have been given and as to the size of the hatch through which it is alleged to have been passed.

Witness testified that on one of the barges involved in the winking operation, the hatch was 60 feet long and as wide as the barge. Whether this would constitute an opening sufficient for a wink to go through was not, at the time court adjourned, determined.

Robert Sass, a barge-tender, finished his evidence against his former employees, and then Philip Ganasi took the stand. Ganasi worked as a shoveler on the barge, and his testimony was substantially the same as that given by the barge hands already questioned; that, when coal was being discharged from the barges the weighed buckets were overloaded, while the unweighed were but lightly filled, and that weights were but infrequently taken.

He said that the hatch-tender, employed by the company, named Rooker, threatened to fire on him on one occasion because a weighed tub he had filled was not sufficiently overloaded.

Ganasi testified that during the time of the Grand

Jury investigation Rooker had taken him to the office of F. C. Mills, when Mills had questioned him concerning what he had told the grand Jury. [2104—2035]

[Newspaper Clipping from] “Bulletin,” January 20, 1914.

PACIFIC MAIL HEAD CALLED AS WITNESS.
Schwerine to be Asked if He Knows About Collusion
in “Coal Frauds.”

A new sensation broke loose in the Western Fuel conspiracy case to-day, when the Federal grand jury ordered R. P. Schwerine, vice-president and general manager of the Pacific Mail Steamship Company, to appear this afternoon and relate what he knows, if anything, about the alleged collusion between officials of his company, certain former customs officials and the Western Fuel defendants, to defraud the Government.

Schwerine will be informed by Government Prosecutor Sullivan that his testimony will not render him immune from prosecution, if it is found that he has been culpable.

Besides Schwerine, A. J. Thompson, purchasing agent of the Pacific Mail Steamship Company; W. S. Miller, chief city weigher of the Western Fuel Company, and A. J. Schultz, stevedore, have been subpoenaed. According to the Federal authorities the Government prosecutors will attempt to show, among other things, that Schwerine and Thompson are members of the “donation club” maintained by the fuel concern, and to whom free coal is supplied,

as has been brought out in the testimony at the Western Fuel trial.

Today's investigation by the Government inquisitorial body is entirely independent from the trial now in progress before Federal Judge Dooling of the eight Western Fuel officials and the employees.

The grand jury has also instituted an investigation today into the alleged activities of several gumshoe men who have infested Judge Dooling's court since the beginning of the trial on December 9. "Skin 'Em Alive" Kelly, a notorious waterfront character, said to be the leader of the gumshoe men, who are understood to be in the employ of the defense, has been subpoenaed. H. Eccles, an oldtime race track figure, who has been constantly in attendance at the trial, has also been subpoenaed, as well as several John Does. These "sleuths" will be interrogated at length by the Federal inquisitors.

J. P. Burns, formerly assistant weigher for the Western Fuel Company, was the first witness to be called today by Special Prosecutor Theodore J. Roche. In substance, his testimony was corroborative of that given previously by several witnesses to the effect that tubs of coal to be weighed were filled to overflowing, while those that were not to be weighed were considerably lighter. Burns also testified that he personally observed on several occasions large quantities of coal flowing into the bunkers at Mission street without being weighed at all. The witness explained that this fraud was effected by so placing the coal cars that only half of the coal coming down the chutes was run into the car, while the

remainder would go into the bunkers unweighed.

When asked by Attorney McCutcheon why he didn't complain to Chief Weigher Wooster, the witness replied:

"He was too dishonest. It would be no use."

"The Missing Link."

The "missing link" of the case, which has been blamed for much "short-weighing," bobbed up in the testimony of Assistant Government Weigher Arnold Freund, who worked with Weigher Edward Mayer, one of the defendants. The witness said that

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the link was so short that it raised the coal cars off the scales to such an extent that it made a difference of 3000 pounds in weight in favor of the "coal trust" in every two cars put on the scales. Freund could not say how long the link had been in the service before discovered.

Freund told the jury of a sleuthing expedition he operated when he was suspicious of Mayer manipulating the scales in favor of the fuel company. He declared that he chalked the connecting rod and later found chalk marks on Mayer's boots and trousers. Mayer had been accused before of pressing down on the rod so as to lessen the weight of the imported coal in the cars, thereby cheating the government of duties.

Juror Joseph Stackler, a blacksmith, questioned the witness concerning the dimensions of the "missing link," as compared to the other links that join the fuel cars.

J. Barfield, a government weigher, testified that he saw a Western Fuel employe shoveling into the bunkers imported coal that had not been weighed. He said that when he complained of this to Defendant Mayer, it was explained that the shoveler was a new employe and did not understand he was helping to cheat the government. [2105—2036]

[Newspaper Clipping from] "Bulletin," January 21, 1914.

COAL FREE TO SCHWERINE, HE TESTIFIES.

Norcross Said Bills Marked Paid Were Charged to "Operating Expenses."

That R. P. Schwerine, vice-president and general manager of the Pacific Mail Steamship Company, received from the Western Fuel Company \$1358 worth of coal during the last six years for his personal use, and for which he never paid one cent, was the direct testimony of David C. Norcross, secretary for the company, this morning.

Norcross said that regular orders for coal would come to the office of the Western Fuel Company from Schwerine; that these orders were given to James B. Smith; that a regular bill was made out for the amount of coal delivered to the Pacific Mail official, but that J. B. Smith would order the bookkeeper to credit the Schwerine account paid and to charge the amount to "operating expenses." Norcross said that all of this coal was delivered to Schwerine's home at San Mateo.

The books of the Western Fuel Company show that from September 11, 1907, to March 17, 1909,

Schwerine's donation of coal amounted to \$496; that

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from November 6, 1910 to June, 1913, there was \$862 worth of coal sent to him, with the compliments of the coal company.

A. J. Thompson, purchasing agent for the Pacific Mail, and William Chisholm, dock superintendent, were also mentioned by the witness as recipients of coal favors from the fuel company.

The prosecution brought out another illuminating statement from Norcross concerning the company's methods. About the middle of 1906 the local customs department was instructed from Washington that no money was to be paid customs weighers working overtime in the handling of coal, but that such men should receive instead the next day off, following the occasion of the extra service. This regulation was ostensibly in force until April, 1911, but through the statements of the fuel company's secretary on the stand today the Western Fuel Company continued to pay these government weighers \$1 an hour for all overtime. This money "was paid to customs weighers by Edward Mayer, who received the money from the cashier, under directions from James B. Smith. No receipt was ever taken from the weighers for this money." This money also was charged to "operating expenses."

This admission by the company's secretary that government employes were in the pay of the coal men is considered significant by the attorneys for the government, for Special Prosecutor Roche stated in

court this morning, "Up to this time all the weighers have denied it."

The prosecution finished the case for the government a half hour after the second session of court today. The first move of the defense was to move that the court dismiss the case, on the ground that the government failed to prove a "conspiracy," as charged in the indictment. [2106—2037]

[Newspaper Clipping from] "Bulletin," January 22, 1914.

FUEL CO. PRESIDENT STRICKEN.

John L. Howard Suffers Sudden Blow From Apoplexy After Day in Court.

The prosecution in the Western Fuel cases has been requested to make a motion for the dismissal of the charge of conspiracy against John L. Howard, who was stricken with apoplexy at his home and is believed to be dying.

This afternoon it is expected that steps will be taken to communicate with the Attorney General in Washington, when the facts of Howard's illness will be laid before him.

In the event of an immediate reply there will be a formal request made to Judge Dooling in open court today.

Dr. Liliencrantz said this afternoon that Howard is in a critical condition, and that he is not expected to survive the night. For many months he has been suffering from high blood pressure, and the stroke last night was the outcome. His left side is paralyzed, and his family have been informed of his critical condition.

John L. Howard, president of the Western Fuel Company and one of the defendants in the United States District Court now on trial for frauds against the Government, was stricken with apoplexy at his home, 87 Vernon avenue, Piedmont, last night, and is now reported to be in a critical condition.

Howard returned to his home yesterday afternoon after spending the day in court. He complained of feeling uncomfortable, but he did not regard his condition as serious until he felt himself losing consciousness. His son, John L. Howard, Jr., summoned Dr. Liliencrantz of Oakland, and later Dr. Emil Schmoll of San Francisco was summoned to Oakland.

Both physicians expressed much concern over their patient's condition, because after the first stroke had passed symptoms of paralysis began to develop.

Howard has been in constant attendance in Judge Dooling's courtroom since the beginning of the trial on December 9.

MOTION TO DISMISS CONSPIRACY CASES.

An attempt to throw the Western Fuel conspiracy case out of court will be launched tomorrow before Federal Judge Dooling, when the battery of lawyers, representing the eight defendant officials and employes of the Western Fuel Company, will ask that the prosecution be dismissed on the ground that no conspiracy has been established.

In the event that the dismissal motion is denied, further motions will be made to quash the indictments against Sidney V. Smith and Robert Bruce,

directors of the fuel concern, on the ground that the testimony adduced by the prosecution has failed to connect Smith and Bruce with the alleged conspiracy to defraud the government.

If Judge Dooling denies the various motions in behalf of the defendants tomorrow, the trial will be resumed Monday with the beginning of taking testimony for the defense. It is announced by the defendants' attorneys that they will base their case on the contentions as outlined in Attorney Warren Olney's opening statement to the jury. Olney told the jury that the overages and shortages charged to the defendants by the government, and which resulted in the sale of 66,000 tons of coal, which were never bought by the Western Fuel Company, will be explained by the testimony of experts, who will show that evaporation, humidity and moisture are to blame for the varying weights of coal handled by the accused fuel trust. [2107—2038]

[Newspaper Clipping from] "Bulletin," January 26, 1914.

3 DIRECTORS FREE OF FUEL FRAUD CHARGE.

**Only One Director and Three Coal Weighers Left
to Stand Trial.**

With the death of John L. Howard, the president, and the dismissal by the court's ruling of the charges against him and three other directors, there is left to-day to stand trial for conspiracy to defraud the government only four members of the Western Fuel Company. These men who are left to face the

charges of fraud are James B. Smith, Frederick C. Mills, E. H. Mayer and E. J. Smith.

The last two are but weighers, men who actually worked in the coal during the times the alleged fraudulent weighing was going on. Frederick C. Mills is another employe, the dock superintendent.

James B. Smith is the only director left to stand trial. He has been the general manager of the company, in charge of the docks here.

But the other directors, because of insufficient evidence, are cleared. These men are Sidney V. Smith, Robert Bruce and Joseph L. Schmidt.

"We concede that the evidence we presented against these three directors was slight, but in opinion it pointed to guilty knowledge," was the contention of the special prosecutors. This was the point about which all the argument before Judge Dooling Saturday for dismissal of the charges against these defendants revolved. This was the point that the judge, after listening to arguments throughout the day, decided was not established by the prosecution.

"The difficulty of getting evidence is no excuse for not getting it," remarked Judge Dooling.

"The 'higher-ups,'" declared Special Prosecutor Matt I. Sullivan, "always remove themselves as far as possible from the chance of being caught in the toils. It is ever the underlings who commit the wrongs and run the chances—the men, who, working for nominal pay, do the bidding of their employers.

"And James B. Smith," continued Sullivan, warming to the subject, "the man who had complete charge of the coal company's operations at this port,

who employed all the help, who was in constant touch with every practical detail of the business and who not only knew of the methods employed, but offered frauds and even committed many of them himself—this man, in the opinion of the government, is most guilty of all.

“It was Smith who bribed the Pacific Mail officials and who was responsible for the corruption of government weighers, too. It was Smith who bribed R. P. Schwerine with regular presents of coal—Schwerine, high in business and social circles and supposed to represent the stockholders of the big Pacific Mail Company and stand on guard to keep out the petty grafters who might be caught conniving at thefts from his own company.

“We never supposed that Schwerine would stoop so low as to accept a couple of tons a month from the company—coal which J. B. Smith charged to ‘operating expenses’—and then let these petty grafters remain in his employ.

“In my opinion,” remarked Sullivan, “these disclosures of money and coal payments to Pacific Mail people and to Government weighers was simply lifting one edge of the curtain.”

In spite of the fact that charges against them have been dismissed, Robert Bruce and Sidney V. Smith appeared in court this morning and followed attentively the testimony of the first witness called for the defense of the Western Fuel Company—one director and three employes of which remain to face trial for conspiracy.

Arthur Millar, who has served the company as gen-

eral foreman since October, 1911, testified that he had always instructed hatch tenders to keep the tubs evenly filled, and that he had never given nor received any orders to overload weighed tubs or to fill them with fine coal. He harped on the fact that "tubs are evenly filled" and testified that he had often seen steamers being coaled when the "tubs were all evenly filled," but could not remember just when these occasions were, explaining that the life he led was indeed a "busy life." Mr. Millar is still in the employ of the coal company.

Frank Wilson, a hatch tender, whose name has often come into the record through testimony of witnesses for the prosecution, said that he had worked for the Western Fuel Company for the last ten years, and that during that time he was innocent as a babe of any form of duplicity. Wilson seemed to be a curiously single-minded man, his entire testimony clinging tenaciously to the one idea that his one aim while working for the company was to "keep the tubs evenly filled at all times. Have no trouble with the weighers."

Andrew Rocca, a cherubic Mexican, gave practically the same testimony as Frank Wilson, perhaps a little stronger, for he stated that in all the time he served as a hatch tender for the company he had never seen a weighed bucket bulge over to the slightest degree; but that they were always even. "Always keep da tubs even," was the reiterated testimony of Mr. Rocca. [2108—2039]

[Newspaper Clipping from] "Bulletin," January
27, 1914.

FUEL "FRAUD" LAWYERS MAKE BIT OF A STIR.

Displeased at Presence of Government's Star Witnesses in Courtroom.

A bit of a stir was created in the United States District Court today when Attorneys Stanley Moore and E. J. McCutcheon, of counsel for the defense, at the trial of indicted Western Fuel Company men, objected vehemently to the presence in court of David and Edwin Powers, brothers and former assistant superintendents of the company. They did not address their objections to the bench, but engaged in a spirited parley with Special Prosecutors Sullivan and Roche over what they called the "unfairness" of allowing the Powers brothers to listen to testimony of witnesses for the defense—still in the employ of the Western Fuel Company—in the trial in which it is charged that the defendants cheated the government of nearly a million dollars.

Prosecutor Sullivan insisted that, as the Powers brothers had finished their testimony for the government and were still under subpoena they had a right to sit in court. The point was not formally made to the court and Judge Dooling was not called to pass upon it.

The opposition to the presence of the Powers came when Frank Wilson, hatch tender for the Western Fuel Company, was being cross-examined by Special

Prosecutor Sullivan. The prosecutor sought to elicit from the witness the subject matter of a conversation he is said to have had with Edwin Powers, following the indictment of the Western Fuel defendants, and in which Wilson is alleged to have said, "I wonder if they are going to bring me into the case, What can I do? The waterfront owes me a living."

"If you are called as a witness you can tell the truth. You know what was done down there at the bunkers," Powers is said to have replied to Wilson at the time.

Wilson on the stand denied that any such conversation had taken place with Edwin Powers.

Another link in the chain of evidence being welded by the Government prosecutors featured today's session. Blacksmith W. R. Olinder of the Western Fuel Company, on cross-examination, testified that he was called upon to straighten out an objectionable link that coupled the coal cars on the Mission-street bunkers of the "coal trust," the prosecution seeking to show that this link affected in favor of the company the weight of the coal in the two cars that they joined. The witness testified that the link in question was employed on the Mission-street bunkers. Heretofore William Delaney, weigher, for the fuel company, and Arnold Freund had testified in behalf of the Government that a short link, which helped to cheat the Government of duties in the weighing of coal, was used to couple cars on the Folsom-street bunkers. Freund declared on the stand that when he discovered the peculiar link he found that it so lifted the cars from the scale while being weighed that 3000

pounds of coal in a load of 21,000 pounds escaped import duty.

When asked by Prosecutor Sullivan whether or not James B. Smith and Frederick C. Mills, defendants, were not present when he was called upon to fix the mysterious link on the Folsom-street bunkers, the witness said he was too excited to notice who was present.

Olinder testified that on every occasion that he was called to the bunkers in response to a remonstrance from the Government weighers he was too excited to notice who was present when he made the necessary repairs. [2109—2040]

[Newspaper Clipping from] "Bulletin," January 28, 1914.

MORE WESTERN FUEL EMPLOYEES ON STAND.

More employees of the Western Fuel Company were called to the witness stand today in an endeavor to refute the testimony of government witnesses, who told at length, in detail, and corroboratively, of the frauds charged in the indictments against the defendants.

Several days will be occupied by similar testimony before the defense calls upon experts to testify that the shortages and overages of coal alleged by Uncle Sam is caused by the action of the elements.

Joseph Desmond and John T. Linehan, now employed by the coal trust, today testified to the effect that all the testimony produced by Government Prosecutors Sullivan and Roche concerning the al-

leged frauds is without foundation in fact. [2110—2041]

[Newspaper Clipping from] "Bulletin," February 2, 1914.

COAL EXPERT TAKES STAND IN FUEL WAR.

The long-threatened "expert testimony in the Western Fuel case began today, when S. W. Parr, authority on coal, was called to the witness stand by the defense. Parr has been professor of applied chemistry at the University of Illinois for 23 years.

Moisture, evaporation, humidity and other elements will be accused of the discrepancies in the weights of coal between Uncle Sam's calculations and those of the indicted "coal trust." [2111—2042]

[Newspaper Clipping from] "Bulletin," February 11, 1914.

COAL FRAUD TRIALS NEARING THE CLOSE.

Officials of Company Testify in Own Behalf.

General Manager James B. Smith, Superintendent Frederick C. Mills of the Western Fuel Company, defendants in the coal fraud trial in Judge Dooling's court, took the witness stand in their own behalf this afternoon. They denied all the government's charges that they actively assisted in the alleged swindling of Uncle Sam out of customs duties and fuel.

Edward J. Smith and Edward Mayer, defendants, checker and weigher, respectively, for the indicted "coal trust," also put in a general denial of any participation in the alleged fraud.

It is expected that the defense will close tonight and that the case will go to the jury Friday. [2112—2043]

[Newspaper Clipping from] "Bulletin," February 17, 1914.

COAL CASE CLOSES IN HOT WORDS.

Defense Abandons Argument for Clients and Attacks Prosecutors.

Attorneys Matt I. Sullivan and Theodore J. Roche, deputed by President Wilson to represent the United States Government in the prosecution of the Western Fuel fraud defendants, were mercilessly grilled, their integrity attacked and their motives impugned, before the jury in Federal Judge Dooling's court today, by Attorney E. J. McCutcheon, for the defense, in a fiery speech that consumed a full hour of the two hours allotted to him for argument.

McCutcheon sneeringly charged the prosecutors with "misrepresenting the majesty of the law."

McCutcheon's Fulmination.

"At no time during the progress of this trial," he declared, "have these gentlemen shown any inclination to give these defendants a fair trial. I say this with a full realization that if it has not been established in your minds this assertion will redound to my own discredit. These gentlemen do not represent the majesty of the law. They are here simply for a

fee, and they want you to help them to hang at their belt the scalps of these defendants. Their claim that they represent the majesty of the law is an effrontery. It is without parallel in the history of criminal law. Who is the government they speak of in this case? They are the government, it appears, and they are here for their fee."

Without Evidence, He Says.

McCutcheon insisted there was no evidence to warrant the prosecution of the defendants on a conspiracy charge and declared the prosecutors' sole interest in the case was not to subserve the law, or to protect the government from fraud, but for the purpose of getting their fee at the expense of the blasted reputations of innocent men.

McCutcheon finally passed on to the "missing link" in the case. This link, which has been a popular bone of contention throughout the long trial, was one which, according to the testimony of several witnesses, was used to couple coal cars on the Western Fuel bunkers. It was established in the testimony that the link was bent so as to cheat the government of duties on tons of coal each time the cars were placed on the scale.

McCutcheon told the jury that this link was discovered in 1905, the offense, if any, having occurred at a time beyond the statute of limitations. He said the link incident could not be taken into consideration by the jury on this account.

An Interruption.

At this juncture both Attorneys Sullivan and Roche jumped to their feet and interrupted the coun-

sel for the defense with the suggestion that the court would decide upon that point, and with the further information that the statute of limitations did not figure, because, according to the indictment, the conspiracy charge was continuous from 1904 to 1912.

Tidwell is Toasted.

The jury was reminded of the recent death of John L. Howard, late president of the Western Fuel Company, a defendant in the case, who died from heart failure during the progress of the trial. Howard's memory was brought before the jurors when McCutcheon interrupted his excoriation of Sullivan and Roche to attack the special agent of the United States Treasury, William H. Tidwell. The attorney scored Tidwell for his "palpable unfairness in his determination to stop at nothing to make a reputation for himself."

"What does it matter to Tidwell if the heart of John L. Howard was crushed by this unjust charge?"

Next, McCutcheon accused Tidwell of contracting with David G. Powers, former official of the fuel concern and a government witness, for perjury.

Ignoring the tirade of McCutcheon, Sullivan this afternoon made his argument. He devoted his entire time to whipping over the evidence adduced from the scores of witnesses. Coldly but forcefully he arraigned the defendants and demanded a verdict of guilty.

For the first time since the beginning of the trial women spectators were present today. More than half the number of spectators were women.

Sullivan to Speak Last.

Court convened an hour ahead of schedule, and the session will be prolonged until Special Government Prosecutor Matt I. Sullivan completes the final plea this afternoon for conviction of the four defendants, General Manager James B. Smith; his brother, Edward J. Smith, a checker; Superintendent Frederick C. Mills, and Edward Mayer, a weigher.

Attorney Stanley Moore opened the argument for the defense yesterday, following Special Prosecutor Theodore Roche. Moore declared that the 66,000 tons increase in the weight of the coal handled by the indicted "coal trust" was accounted for by the inaccurate system of weighing employed by the Government, and by moisture.

Defends Stratton.

In reply to Roche's reference to former Collector of Port Stratton as the man who aided the defense attorneys in their vain attempt to impeach the testimony of Treasury Agent Tidwell, Moore declared that Stratton had enjoyed a long and honorable career both as a State and Federal official, and characterized the dragging of his name into the case as "only another instance of the wholesale slandering and blackening of estimable men, indulged in by the Government prosecutors."

Prosecutor Roche took occasion during the course of his argument to pay a tribute to Edwin Powers, former assistant superintendent of the Western Fuel Company, who proved the Government's star witness, although he was known as a hostile and reluc-

tant witness before he took the stand.

“This sterling young Irishman,” said Roche, “true to the traditions of his country and his adopted country, refused to turn informer. Only when nettled by the defense’s attorneys, who insinuated that he was not telling the truth, and that he was interested in a reward, did Powers divulge any portion of the vast amount of information he possesses concerning the frauds practiced by the Western Fuel Company.”
[2113—2044]

[Affidavit of Elliott Johnson, Dated March 19, 1914.]

[Title of Court and Cause.]

State and Northern District of California,

City and County of San Francisco,—ss.

Elliott Johnson, being first duly sworn, deposes and says: That in addition to those articles attached to his affidavit on file herein, which appeared during the course of the trial of the above-entitled action in the San Francisco “Bulletin,” the cartoon attached hereto appeared in the said San Francisco “Bulletin” under date of January 30, 1914.

ELLIOTT JOHNSON.

Subscribed and sworn to before me this 19th day of March, 1914.

[Seal]

C. B. SESSIONS,

Notary Public in and for the City and County of San Francisco, State of California.

(The cartoon referred to in the above affidavit as appearing in the San Francisco “Bulletin” in its issue of January 30, 1914, was entitled, “Breaking Even—If the Consumers Ever Get a Chance to Sell

a Ton of Coal to the Coal Man.” Said cartoon is sent up in the original to the Circuit Court of Appeals for the Ninth Circuit under that certain stipulation and order of the Court hereinafter embodied in this Bill of Exceptions, and is, by said stipulation and order, made a part of this Bill of Exceptions in all respects and with the same effect as though incorporated at large herein.) [2114—2045]

**[Affidavit of Samuel Knight and Stanley Moore,
Dated March 19, 1914.]**

[Title of Court and Cause.]

State and Northern District of California,
City and County of San Francisco,—ss.

Samuel Knight and Stanley Moore, being duly sworn, deposes and says, each for himself:

That he is, and has been during the trial of the above-entitled cause, one of the attorneys for the defendants herein and engaged in the trial of said cause;

That he was not aware, nor upon information and belief were any of the other attorneys for the defendants aware, nor upon information and belief were any of the defendants aware, until after the trial of said cause had been concluded, that during said trial any of the jurors impanelled to try said cause read any of the newspaper articles referred to in the affidavits herein.

SAMUEL KNIGHT.

STANLEY MOORE.

Subscribed and sworn to before me this 19th day of March, 1914.

[Seal]

C. B. SESSIONS,

Notary Public in and for the City and County of
San Francisco, State of California. [2115—
2046]

[Title of Court and Cause.]

State of California,

County of Alameda,—ss.

Affidavit [of Joseph Stackler, Dated March 3, 1914].

Joseph Stackler, being first duly sworn, deposes and says: I was one of the trial jurors in the above-entitled case.

One of the statements most frequently made in the arguments in the jury-room was that the defendants had not called any of the stevedores or shovelers.

JOSEPH J. STACKLER.

Subscribed and sworn to before me this 3d day of March, 1914.

[Seal]

F. H. BARTLETT,

Notary Public in and for the County of Alameda,
State of California. [2116—2047]

[Title of Court and Cause.]

State of California,

County of Alameda,—ss.

Affidavit [of J. H. Bromberger, Dated March 3, 1914].

J. H. Bromberger, being first duly sworn, deposes and says: I was one of the jurors on the trial of the above-entitled case.

One of the statements most frequently made in the arguments in the jury-room was that the defendants had not called any of the shovelers.

J. H. BROMBERGER.

Subscribed and sworn to before me this 3d day of March, 1914.

[Seal]

F. H. BARTLETT,

Notary Public in and for the County of Alameda,
State of California. [2117—2048]

[Title of Court and Cause.]

State of California,

City and County of San Francisco,—ss.

Affidavit of Stanley Moore [Dated March 5, 1914].

Stanley Moore, being first duly sworn, deposes and says: I am one of the attorneys for the defendants.

At the time the trial commenced and at the time the prosecution rested its case, it was the intention of the attorneys for the defendants to call men shoveling in the barges to testify as to the loading of the buckets and the evenness with which they were filled. This matter was mentioned in several conferences with other matters, and was mentioned in a conference during the last week in which the prosecution was putting in testimony. In all these conferences the other attorneys and I were agreed as to the advisability of calling these witnesses.

Our evidence went in so slowly, and there was so much time consumed on cross-examination, that we began to feel that the trial was lengthening out unduly. For example, we had calculated the testimony of the experts would occupy about a day and one-half,

and it in fact occupied an entire week.

I had interviewed a number of the barge shovellers including a shoveller by the name of Kearney, Jack Wilson and four or five others. For more than a week, I kept Wilson and Kearney in attendance upon the Court, waiting for them to be reached. Sometimes I would excuse them for a morning, if at the beginning of a morning session, I could see they would not be reached that session, I would tell them to be back in the afternoon.

If time had permitted, I had intended to call a considerable number of shovellers, but at the time of interviewing them, I discovered they were mostly foreigners speaking English very [2118—2049] imperfectly, and some of whom could only be understood through the use of an interpreter. For example, there were two barge gangs actually working at the time I was interviewing the shovellers, each gang consisting of eight shovellers. In one gang were three Austrians, one Mexican, one Chilenian, one Swede and two Americans. In the other gang, were two Peruvians, four Chilenians, one Mexican, and one American.

To have examined these shovellers on the witness-stand would have been a long process, and more than half of them would have had to give their testimony through the medium of interpreters. I think the testimony of these shovellers alone would have occupied fully a week's time on the trial.

We had called Arthur Mullen, the general foreman in charge of the barges, and Frank Wilson and Rocca, the hatch-tenders or foreman of the crews.

I kept three of these shovellers in attendance or on call until the last two days of the trial. We then decided that the case would be rested on the following Friday early enough in the day to give the prosecution an opportunity to put in rebuttal before five o'clock. So we eliminated all our remaining evidence and confined our further showing to the testimony of the defendants. I am very sorry now that we did not call every one of the shovelers, all of whose testimony was favorable, because the arguments of the counsel for the Government made much of our failure to call them, and as this omission on our part, as I have since been informed by four of the jurors with whom I have talked, and I believe the fact to be, was one of the chief arguments made in the jury-room in favor of a conviction. I now feel that a mistake was made in not calling these shovelers, and if the trial were to be had over again, every one of them would be called. [2119—2050]

They told me that their instructions were to keep the tubs filled evenly, and they did keep them as even as they could. They, also said there were no instructions given to overload tubs which were to be weighed or underload tubs which were not to be weighed. In fact, they stated, they had no means of knowing when weights were to be taken.

At the time the prosecution rested, and until we began to fear that our case was taking an undue length of time and that perhaps we were over trying it, it had always been the intention of counsel to subpoena and put up on the stand the custom-house weighers, although we understood that they had been

instructed not to talk to us without first reporting to Mr. Tidwell. After our evidence commenced to lengthen out we commenced to consider the advisability of calling only a *proportion* of the weighers and for this purpose I picked out the names of five weighers who had been long in the service. We had also intended calling a number of inspectors. During the last days of the trial, I reduced their number to three. On the next to the last day of the taking of testimony, a Wednesday, I had a final conference with the other counsel as to the necessity for calling these five weighers and three inspectors, and it was decided that their testimony would lengthen out the trial too much, and so it was decided not to call them. I am informed and believe that their testimony would have been very favorable to the defendants, and I now regret very much that we did not call them.

Of course, counsel have to assume the responsibility for their own mistakes in judgment, and I mention these matters only because of their possible consequences to the defendants and merely as a circumstance which I think the Court ought to know as bearing upon the defendants' positions, and to be considered [2120—2051] by the Court, if it can see its way clear to do so, in exercising its discretion upon their application for a new trial.

STANLEY MOORE.

Subscribed and sworn to before me this 5th day of March 1914.

[Seal]

C. B. SESSIONS,

Notary Public in and for the City and County of
San Francisco, State of California.

[**Affidavit of W. P. Lindley, Dated March 11, 1914.**]

[Title of Court and Cause.]

State and Northern District of California,
City and County of San Francisco,—ss.

W. P. Lindley, being first duly sworn, deposes and says:

That he is and has been for over twenty years last past a resident of the City and County of San Francisco, in this State, and has been for several years last past continuously up to the end of the year 1912 a chief engineer of the Pacific Mail Steamship Company engaged and acting in the capacity of chief engineer, at different times during said period, of the steamers "Aztec," "Barracuda," "City of Para," "Acapulco" and "Algoa"; and affiant is now and has been since the 24th day of January last, chief engineer of the Steamship "Pleiades" belonging to and operated by the Luckenbach Steamship Company, which is running a line of steamers between Pacific Coast ports in the State of California and the port of New York.

Relative to certain questions asked J. B. Smith herein [2121—2052] on cross-examination by Mr. M. I. Sullivan and found on pages 4229 and 4230, Volume 38 of the transcript of the reporter's notes taken on the trial hereof, affiant states that at no time when the steamer "Aztec," of which he was chief engineer, was being loaded with coal from the barge "Melrose," or from any other barge, did he, or any assistant engineer of said steamer in his hear-

ing, or to his knowledge, complain about the quality of the coal that was being put into said steamer, and that Eddie Powers did not, as the result of any such complaint, bring any other barge alongside of said steamer, nor was any attempt made by him, or anyone else connected with the Western Fuel Company, to make affiant, or any engineer of said steamer, believe that said steamer was getting a better quality of coal than that contained on any other barge.

Affiant further states that neither he, nor any engineer of said steamer in his hearing, or to his knowledge, condemned any coal that was brought alongside of, or attempted to be loaded into, said steamer "Aztec" by Western Fuel Company as being composed of Telegraph Hill rocks, or anything of that character, or as being of any inferior grade or quality; that affiant never, either when acting as chief engineer of said steamer "Aztec," or on any other occasion, stated that the coal was good for nothing, or that it was all rocks, or made any statement of similar import, nor did said Eddie Powers, nor anyone else connected with said Western Fuel Company, succeed in getting coal discharged from the barge "Theobald," or from any other barge, into said steamer "Aztec" which coal was of the kind or quality referred to in the questions asked by Mr. Sullivan as aforesaid; and affiant further states that no such incident or event ever happened as that implied in the said questions put to defendant J. B. Smith as aforesaid. [2122—2053]

Affiant is positive of the correctness of the foregoing statement not only by reason of the fact that

he has an excellent memory, but also by reason of his previous experience in coal mines. In the year 1900 for some time affiant was master mechanic of the Iwsaquah Coal Company, in the State of Washington, where he was brought into contact with coal and became familiar with its properties, and affiant has acted as chief engineer of coal burning vessels for fully twenty-four years last past.

Affiant has been away from the City and County of San Francisco during the entire time occupied by the trial hereof, except for a few days in the month of December last past, and returned to this port from a voyage at sea on the night of March 9th, 1914.

WM. P. LINDLEY.

Subscribed and sworn to before me this 11th day of March, 1914.

[Seal]

A. M. DUNCAN,

Notary Public in and for the City and County of San Francisco, State of California. [2123—2054]

[Affidavit of William Chisholm, Dated March 18, 1914.]

[Title of Court and Cause.]

State and Northern District of California,
City and County of San Francisco,—ss.

William Chisholm, being first duly sworn, deposes and says:

That he is and has been for seven years last past marine superintendent of the Pacific Mail Steamship Company, and as such has his office at Pier 42 in said City and County of San Francisco.

That during the time above mentioned it was cus-

tomary for the Western Fuel Company, after the coaling of any steamer of said Pacific Mail Steamship Company had been completed, to furnish to said Steamship Company a certificate reciting the amount of coal furnished to said steamer and the name of the barge or barges by which the same was supplied.

That within the past week Edwin Powers, who was formerly an assistant to Mr. Mills, the superintendent of the Western Fuel Company, called on affiant, together with Mr. Theodore Roche, with reference to obtaining information of record in the office of said Pacific Mail Steamship Company regarding the coaling of the Steamer "Aztec." Affiant and said Powers at that time and subsequently examined the certificates issued by the Western Fuel Company regarding the coaling of said steamer and the coaling of the steamer "Acapulco," also belonging to said Pacific Mail Steamship Company, which examination covered the period of time when W. P. Lindley was chief engineer thereof, and they found no certificate which showed that either of said steamers had been coaled by two different barges after any voyage.

Affiant stated to said Theodore Roche that further [2124—2055] information regarding the coaling of these steamers could be obtained from, and was contained in, the tally-books kept by Mr. Parke, the tally clerk of said steamship company, and that said tally-books were in the possession of the Government as a part of the records of said Pacific Mail Steamship Company, which had been obtained by the prosecution prior to the time when the trial of the

above-entitled cause was commenced.

To the best of affiant's recollection and belief there was no trouble or complaint regarding the furnishing of coal by said Western Fuel Company to said steamers.

WILLIAM CHISHOLM.

Subscribed and sworn to before me this 18th day of March, 1914.

[Seal] GENEVIEVE S. DONELIN,
Notary Public in and for the City and County of San
Francisco, State of California.

In response to the above-recited affidavits, introduced in evidence by the defendants, the following counter-affidavits were, within the time allowed by law therefor, duly filed in open court or served by the plaintiff upon the defendants and their attorneys and filed with the Court, and were offered and received in evidence, to wit: [2125—2056]

[**Affidavit of Thomas C. Maher, Dated March 13, 1914.**]

*In the District Court of the United States, for the
Northern District of California.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et als.,

Defendants.

State and Northern District of California,
City and County of San Francisco,—ss.

Thomas C. Maher, having been first duly sworn,
deposes and says:

I was one of the jurors impaneled to try the above-entitled action, and by whom said action was tried.

I have read the affidavit made herein by juror, J. H. Bromberger, verified on the 8th day of March, 1914, before Henry G. Tardy, Notary Public in and for the County of Alameda, State of California, to be used on defendants' motion for a new trial herein.

I have also read the affidavit made herein by the juror, Joseph Stackler, verified on the 8th day of March, 1914, before Henry G. Tardy, Notary Public in and for the County of Alameda, State of California, to be used on said defendants' motion for a new trial.

Said juror, J. H. Bromberger is mistaken in stating that the juror Fred Becker gave to him a copy of the Oakland "Tribune" containing a piece about the sugar case in the East [2126—2057] and appearing in that part of the "Tribune" written by The Knave. The paper referred to had been given by Mr. Becker to me. Subsequently Mr. Bromberger requested me to let him see the paper and I handed the paper to him. I do not recall the exact date upon which this transaction occurred but I do remember that it was during one morning prior to the noon recess of said court. During the noon recess of said day, and on Market street, Mr. Bromberger returned the paper to me and I placed it in my pocket. There-

after, and on the same day and before court convened for the afternoon session and while in the corridor of the Post Office Building connecting with said courtroom, I returned the paper to Mr. Becker without having read it and without making to the said Becker any comment thereon. At no time thereafter and prior to the termination of said trial did I again see said paper or any copy thereof.

At no time did I state to any of the jurors by whom the above-entitled action was tried, either in substance or effect, that the sugar company and the Western Fuel Company were big corporations and that all of these big corporations did business along the same lines, or that all of them gave commissions or contributions, or any commission, or contribution, or that the sugar case was a similar case only that one company was handling sugar and the other coal.

Not only was the above statement not made by me but no such statement, either in substance or effect was made in my presence or hearing by any other juror during the trial of said action.

I have also read the affidavit made herein on the 10th day of March, 1914, by the juror, Wm. Long, verified before Lottie M. Conklin, Notary Public in and for the County of Alameda, State [2127—2058] of California, to be used on defendants' motion for a new trial. At no time during the trial of said case did I state to a number of jurors, or to any juror, either in substance or effect, that in the sugar cases, or in any sugar case, they got one of the men involved but that this man kept his mouth shut and

they could not get the others, but that they convicted one of them.

I state positively and unequivocally that none of the newspaper articles relating to the trial of the above-entitled action, or to any of the parties or witnesses connected therewith, or commenting upon, or relating to any of the issues involved in said action, in any way affected or influenced my judgment in arriving at a verdict in said action.

The verdict of said jury, so far as I was concerned, was based entirely and exclusively upon the evidence introduced during said trial, the instructions given by the Court to the jury, and the observations made by me while inspecting a portion of the premises in the possession of the Western Fuel Company in company with the other jurors and Hon. Maurice T. Dooling, judge presiding upon the trial of said action.

THOMAS C. MAHER.

Subscribed and sworn to before me this 13th day of March, 1914.

LLOYD MACOMBER,

Notary Public in and for the City and County of San Francisco, State of California. [2128—2059]

[Affidavit of R. H. Gatley, Dated March 13, 1914.]

[Title of Court and Cause.]

State and Northern District of California,

City and County of an Francisco,—ss.

R. H. Gatley, having been first duly sworn, deposes and says:

I was one of the jurors impaneled to try the above-

entitled action, and by whom said action was tried.

I state positively and unequivocally that none of the newspaper articles relating to the trial of the above-entitled action, or to any of the parties or witnesses connected therewith, or commenting upon, or relating to any of the issues involved in said action, in any way affected or influenced my judgment in arriving at a verdict in said action.

The verdict of said jury, so far as I was concerned, was based entirely and exclusively upon the evidence introduced during said trial, the instructions given by the Court to the jury, and the observations made by me while inspecting a portion of the premises in the possession of the Western Fuel Company in company with the other jurors and Hon. Maurice T. Dooling, judge presiding upon the trial of said action.

I have read the affidavit made herein by the juror, J. H. Bromberger, verified on the 8th day of March, 1914, before Henry G. Tardy, Notary Public in and for the County of Alameda, State of California, to be used on defendant's motion for a new trial herein. Mr. Bromberger is mistaken when he states that the article known as "The Knave," published in the Oakland "Tribune" under date of February 8th, 1914, was handed to me. At no time during the trial of said action was I shown, or did I read, said [2129—2060] article, or any portion thereof. Said article was not shown to me by Mr. Fred Becker, one of the jurors who tried said action, or by any other person, nor did said Fred Becker request me to read said article, nor did he say anything in my presence

or hearing concerning said article or the sugar case therein referred to, or that the only difference between the case referred to in said article and the above-entitled action was that one was sugar and the other coal.

At no time during the trial of said action did the juror, T. C. Maher, or any other juror, discuss with me, or in my presence or hearing, the American Sugar Refining Company case in New York, or any other sugar case.

R. H. GATLEY.

Subscribed and sworn to before me this 13th day of March, 1914.

[Seal]

LLOYD MACOMBER,

Notary Public in and for the City and County of San Francisco, State of California.

[Affidavit of William Long, Dated March 13, 1914.]

[Title of Court and Cause.]

State and Northern District of California,
County of Alameda,—ss.

Wm. Long, having been first duly sworn, deposes and says:

I was one of the jurors impaneled to try the above-entitled action, and by whom said action was tried.

I state positively and unequivocally that none of the newspaper articles relating to the trial of the above-entitled action, or to any of the parties or witnesses connected therewith, [2130—2061] or commenting upon, or relating to any of the issues involved in said action, in any way affected or influenced my judgment in arriving at a verdict in said action.

The verdict of said jury, so far as I was concerned, was based entirely and exclusively upon the evidence introduced during said trial, the instructions given by the Court to the jury, and the observations made by me while inspecting a portion of the premises in the possession of the Western Fuel Company in company with the other jurors and Hon. Maurice T. Dooling, judge presiding upon the trial of said action.

WILLIAM LONG.

Subscribed and sworn to before me this 13th day of March, 1914.

[Seal] W. F. KROLL,
Notary Public in and for the County of Alameda,
State of California.

**[Affidavit of William K. Beans, Dated March 13,
1914.]**

[Title of Court and Cause.]
State and Northern District of California,
County of Santa Clara,—ss.

William K. Beans, having been first duly sworn, deposes and says:

I was one of the jurors impaneled to try the above-entitled action, and by whom said action was tried.

I state positively and unequivocally that none of the newspaper articles relating to the trial of the above-entitled action, or to any of the parties or witnesses connected therewith, [2131—2062] or commenting upon, or relating to any of the issues involved in said action, in any way affected or influenced my judgment in arriving at a verdict in said action.

The verdict of said jury, so far as I was concerned, was based entirely and exclusively upon the evidence introduced during said trial, the instructions given by the Court to the jury, and the observations made by me while inspecting a portion of the premises in the possession of the Western Fuel Company in company with the other jurors and Hon. Maurice T. Dooling, judge presiding upon the trial of said action, and on the discussion of the evidence, and instructions of the Court, by the jury after retiring to the jury-room.

WILLIAM K. BEANS.

Subscribed and sworn to before me this 13th day of March, 1914.

[Seal]

CHARLES J. CLARK,

Notary Public in and for the County of Santa Clara,
State of California.

[Affidavit of L. Ph. Bolander, Dated March 11, 1914.]

[Title of Court and Cause.]

State and Northern District of California,
City and County of San Francisco,—ss.

L. Ph. Bolander, having been first duly sworn, deposes and says:

I was one of the jurors impaneled to try the above-entitled action, and by whom said action was tried.

I have read the affidavit made herein by the juror, [2132—2063] J. H. Bromberger, verified on the 8th day of March, 1914, before Henry G. Tardy, Notary Public in and for the County of Alameda, State of California, to be used on defendant's motion for a new trial herein. Mr. Bromberger is mistaken

when he states that the article known as "The Knave," published in the Oakland "Tribune" under date of February 8th, 1914, was handed to me. At no time during the trial of said action was I shown, or did I read, said article, or any portion thereof. Said article was not shown to me by Mr. Fred Becker, one of the jurors who tried said action, or by any other person, nor did said Fred Becker request me to read said article, nor did he say anything in my presence or hearing concerning said article or the sugar case therein referred to, or that the only difference between the case referred in said article and the above-entitled action was that one was sugar and the other coal.

At no time during the trial of said action did the juror, T. C. Maher, or any other juror, discuss with me, or in my presence or hearing, the American Sugar Refining Company case in New York, or any other sugar case.

I state positively and unequivocally that none of the newspaper articles relating to the trial of the above-entitled action, or to any of the parties or witnesses connected therewith, or commenting upon, or relating to any of the issues involved in said action, in any way affected or influenced my judgment in arriving at a verdict in said action.

The verdict of said jury, so far as I was concerned, was based entirely and exclusively upon the evidence introduced during said trial, the instructions given by the Court to the jury, and the observations made by me while inspecting a portion of the premises in the possession of the Western Fuel Company in

[2133—2064] company with the other jurors and Hon. Maurice T. Dooling, judge presiding upon the trial of said action.

At no time during the trial of said action did the juror, Thomas E. Maher, or any other juror, state in my presence or hearing, in substance or effect, that the Sugar Company and the Western Fuel Company were big corporations, and that these big corporations did business along the same lines, or that all or any of them gave commissions or contributions, or that the sugar case was a similar case only one company was handling sugar and the other coal.

L. PH. BOLANDER.

Subscribed and sworn to before me this 11th day of March, 1914.

[Seal]

J. D. BROWN,

Notary Public in and for the City and County of San Francisco, State of California.

[Affidavit of Edward Powers, Dated March 14, 1914.]

[Title of Court and Cause.]

State and Northern District of California,
City and County of San Francisco,—ss.

Edward Powers, having been first duly sworn, deposes and says:

I have read the affidavit made by W. P. Lindley, sworn to on the 11th day of March 1914 before A. M. Duncan, Notary Public in and for the City and County of San Francisco, State of California, to be used upon defendants' motion for a new trial herein.

[2134—2065]

For several years prior to the month of July, 1911,

I was in the employ of the Western Fuel Company as assistant to the defendant, F. C. Mills, who, during the whole of said period of time was Superintendent of Docks and Barges of said Western Fuel Company. While said defendant, F. C. Mills would be on a vacation or while he was sick and absent from his said business, I would act in his place and discharge the duties which would ordinarily be performed by said F. C. Mills, and upon said occasions would report directly to the defendant, James B. Smith.

Upon an occasion while I was acting in the place and stead of said defendant F. C. Mills, said defendant Mills being absent from his business because of being on a vacation, or by reason of illness, I was required to discharge coal into the bunkers of the steamship "Aztec" to be used by it for fuel. At that time, to the best of my recollection, said steamship "Aztec" was lying on the north side of Pier No. 41. In order to coal said "Aztec" I had the barge "Melrose" placed along side of said "Aztec" and started to discharge coal from said "Melrose" into one of her bunkers. While said "Aztec" was being so coaled by said barge "Melrose" said W. P. Lindley, who was then and there the Chief Engineer upon said "Aztec" complained to me about the quality of said coal and when I joked with him about it, he asserted that the barge was full of Telegraph Hill rocks. I finally told him that he would have to take the matter up with Mr. Chisholm, who was then the Marine Superintendent of the Pacific Mail

Steamship Company, the company which was operating said "Aztec."

My recollection is that I accompanied him to Mr. Chisholm's office, but as to this I am not certain. I know, however, that I did meet Mr. Chisholm with said W. F. Lindley in connection with said complaint. [2135—2066]

Mr. Chisholm telephoned to one of the officials of the Pacific Mail Steamship Company, whom I believe to be Mr. Adolph J. Frey, and I telephoned to the defendant, James B. Smith, who informed me that he would ring up the office of the Pacific Mail Steamship Company. Finally the defendant, James B. Smith came down to the dock and with myself went aboard the barge and examined the coal. As a result of said examination it was finally agreed that the "Melrose" should be removed and the "Theobold" which was then lying on the south side of Pier 44, should be brought alongside of the "Aztec," and said "Aztec" should be coaled with the coal contained on the "Theobold." At said time the coal upon said "Melrose" was the same kind of coal as was upon said "Theobold," but it was represented that the coal upon the "Theobold," was a better quality coal.

Subsequently, and on the same day the "Melrose" was removed and the barge "Theobold" containing the same kind of coal as that in the "Melrose" was substituted in her place. The steamship "Aztec" thereupon completed her coaling from the coal located upon said barge "Theobold."

Affiant further states that during the month of

January 1914 and while affiant was in attendance upon the above-entitled court as a witness, having been served with a subpoena issued at the request of the Government, he met said W. P. Lindley in the corridor of the Postoffice Building, adjacent to, and connecting with the courtroom in which the trial of said action was in progress. At said time said W. P. Lindley had just left said courtroom.

I desire to state, however, that said occasion was some time prior to the time said defendant, James B. Smith, [2136—2067] was called to the stand, or testified as a witness in said action.

EDWARD A. POWERS.

Subscribed and sworn to before me this 14th day of March, 1914.

[Seal]

J. A. SCHAERTZER.

Deputy Clerk U. S. District Court, Northern District of California.

[Affidavit of W. H. Tidwell, Dated March 13, 1914.]

[Title of Court and Cause.]

State and Northern District of California,

City and County of San Francisco,—ss.

W. H. Tidwell, having been first duly sworn, deposes and says:

I am, and for several years last past have been a special agent of the United States Treasury Department, and as such special agent have had personal charge of the investigation into the frauds committed against the United States by the Western Fuel Company and certain of its officers and employees, which resulted in the finding and filing by the Federal

Grand Jury of the indictment which was and is the foundation for the above-entitled action.

As such special agent I attended the trial of said action and was present in court, with but very few exceptions, throughout the entire trial of said action.

Upon a number of occasions during said trial, before court would convene, some of the jurors who had been impaneled to try and who were engaged in trying said action, read newspapers. Upon said occasions said jurors so reading said newspapers would be located in the corridor of the United States [2137—2068] Postoffice Building, which was situated just outside of and which connected with the courtroom in which the sessions of said court were held. The fact that said jurors upon said occasions were so reading said newspapers was, of course, apparent to all persons passing through said corridor and into said courtroom at the time said jurors were so located in said corridor reading said newspapers.

During the examination of some of the jurors touching their qualifications to act as jurors upon the trial of said action, they were questioned by Mr. Stanley Moore, one of the attorneys for the defendants herein, concerning their knowledge of certain articles relating to the above-entitled case, which had been published in certain newspapers prior to the commencement of the trial of said action. Said Mr. Stanley Moore also interrogated some of the proposed jurors, for the purpose of ascertaining from them to what newspapers they subscribed and what newspapers they read.

I have examined the affidavit made herein by El-

liott Johnson, to which are attached articles, items and editorials published from time to time in the San Francisco "Examiner"; also the affidavit made by said Elliott Johnson, to which are attached articles, items and editorials published from time to time in the San Francisco "Bulletin." Practically all of said newspaper articles, items and editorials were seen and read by me about the dates upon which they appeared in said respective newspapers.

Upon and according to my information and belief, the fact that said articles, items and editorials were so published in said respective newspapers was known by the defendants in this action, and by the various attorneys representing said defendants, on or about the date upon which each of said articles, [2138—2069] items and editorials were so published in said respective newspapers. Upon and according to my information and belief, said defendants and their said attorneys knew, prior to the termination of the trial of said action, that all of said newspaper articles, items and editorials had been so published, and were familiar with the matters set forth in each of said articles, items and editorials.

At no time during the trial of the above-entitled action did any of the said defendants, or the attorneys for said defendants, or any of them request the above-entitled Court, or Honorable Maurice T. Dooling, Judge therein presiding, to instruct, charge or admonish said jury not to read any item, article or editorial that might appear or be published in any newspaper regarding said action, or any of the issues involved therein, or any of the parties thereto, or

any of the witnesses that were or might be called upon the trial of said action, or bearing or commenting upon the subject matter of said action; nor did said defendants, or any of them, or any of their counsel, at any time during said trial or at the conclusion thereof, request said Court or said Hon. Maurice T. Dooling to instruct, charge or admonish said jury not to permit themselves to be influenced by any article, item or editorial that might have been printed in any newspaper, or that might have been read by them or called to their attention.

W. H. TIDWELL.

Subscribed and sworn to before me this 13th day of March, 1914.

[Seal]

LLOYD MACOMBER.

Notary Public in and for the City and County of San Francisco, State of California. [2139—2070]

[Affidavit of Fred Becker, Dated March 10, 1914.]

[Title of Court and Cause.]

State and Northern District of California,
County of Alameda,—ss.

Fred Becker, having been first duly sworn, deposes and says:

I was one of the jurors impaneled to try the above-entitled action, and by whom said action was tried.

I have read the affidavit dated March 6th, 1914, made by William K. Beans, who was also one of said jurors impaneled to try said action, and by whom said action was tried.

The verdict of the jury in said action was rendered

on the night of the 17th day of February, 1914. On or about the 9th day of February, 1914, I did hand to affiant a newspaper article *article* to read, which newspaper article referred to the American Sugar Refining case, in New York. It is not true, however, that said newspaper contained a series of articles, or any article, distinctly or at all hostile to the defendants in the above-entitled action, or any of them, or that said article commented in any manner, shape or form on the defense of the defendants, or any of them, in this case, or likened this case to said American Sugar Refining Company case in New York, or to any other case.

In each Sunday edition of the Oakland "Tribune," a newspaper printed and published in the City of Oakland, County of Alameda, State of California, appears an article entitled, "The Knave," in which article reference is made to events occurring in San Francisco and elsewhere. In the Oakland "Tribune" published on Sunday morning, February 8th, 1914, appeared one of said articles entitled "The Knave," the whole of which article was and is as follows:
[2140—2071]

(There was here inserted in Mr. Becker's affidavit all of said article entitled, "The Knave," but the only portion thereof bearing any relation to this cause, or which defendants claim might have had any effect upon the minds of the jurors in deciding the same, was and is as follows, the other parts of said article being wholly irrelevant and devoted to a discussion of other and disconnected topics:)

“RECALLS SUGAR FRAUD HISTORY.

Winfred T. Denison, the new Secretary of the Interior for the Philippines, recalled some sugar fraud history in the East in his address at the Palace a week ago before the Commonwealth Club. The suit was against the Havemeyer sugar trust for sugar weighing frauds. Denison acted in this famous case as Assistant United States Attorney-General. By manipulating the scales, it was shown the trust defrauded the Government in ten years out of \$4,500,000 in duties. As a result of the suit, it had to pay back this large sum to Uncle Sam. Denison said this and other evils were due to the ‘spoils system.’ The trust gave regular contributions to both parties and expected a tenfold return one way or another. The new Philippine official did not go into the details of the fraud suit, but if I recall correctly one of the men he sent to the penitentiary at Atlanta for two years was Oliver Spitzer, who had been the superintendent of docks for the American Sugar Refining Company, commonly alluded to as the trust. After he got out Spitzer admitted the steel springs used to manipulate the scales on the dock were his invention. He said he had not confessed at his trial for two reasons. He thought nothing could happen to the trust, believing it so strong the Government could do nothing with it. He also remarked:

‘I was advised to confess. I said the only confession I can make will carry me into a cemetery.’

‘You are referring to one of the trust magnates,’ asked the lawyer.

Spitzer said yes.

THE KNAVE.” [2141—2072]

I now reside, and for many years last past have resided in the City of Oakland, County of Alameda, State aforesaid.

Daily during the trial of the above-entitled action, in traveling from the City of Oakland to the City and County of San Francisco where said trial was in progress and where the above-entitled court held and still holds its session, I was accustomed to take with me and read daily newspapers, among which was the said Oakland "Tribune," for which newspaper I am now, and for many years last past have been a subscriber.

On the morning of February 9th, 1914, or February 19th, 1914, I had with me that portion of said Sunday Edition of said Oakland "Tribune" of February 8th, 1914, entitled "The Knave," the whole of which article I had read. While outside of the courtroom on the morning of said 9th or 10th days of February, 1914, I did call the attention of said William K. Beans to said article and gave it to him to read. At no time did I give or show said article to any of the other jurors engaged in the trial of said action, excepting Juror Maher. Said newspaper article was the only article which I ever gave to said William K. Beans to read, or to which I called his attention during said trial. Said William K. Beans is in error when he states that the following morning he returned said newspaper article to me. Said newspaper article was never returned to me, nor was it afterwards seen by me until within the past few days when my attention was directed to it in connection with the making of this affidavit.

At the conclusion of the session of said court held the day after I gave said article to said William K. Beans, said William K. Beans accompanied me across the San Francisco Bay, he going to Berkeley and I going to my said home. While on said trip said William K. Beans apologized to me for not having returned [2142—2073] said newspaper, stating that he would return it to me the next morning. I told him that he need not mind because I had read the article and did not care anything further about it. As before stated, the newspaper article was never returned to me.

At no time during the trial of said action did I state to said William K. Beans that the sugar people were crooked and that the Western Fuel people were operating along the same lines.

I state positively and unequivocally that none of the newspaper articles relating to the trial of the above-entitled action, or to any of the parties or witnesses connected therewith, or commenting upon or relating to any of the issues involved in said action, or said article above referred to, in any way affected or influenced my judgment in arriving at a verdict in said action. The verdict of said jury, so far as I was concerned, was based entirely and exclusively upon the evidence introduced during said trial, the instructions given by the Court to the jury, and the observations made by me while inspecting a portion of the premises in the possession of the Western Fuel Company, in company with the other jurors, and Hon. Maurice T. Dooling, Judge presiding on the trial of said action.

FRED BECKER.

Subscribed and sworn to before me this 10th day of March, 1914.

[Seal]

LLOYD MACOMBER,

Notary Public in and for the City and County of
San Francisco, State of California. [2143—
2074]

And the aforesaid motion for a new trial and for an order of the Court vacating the verdict of the jury herein having been argued by counsel for the defendants and for the plaintiff, respectively, the Court denied said motion, and, thereupon, rendered its judgment and sentence upon the defendants, James B. Smith, F. C. Mills and E. H. Mayer, and upon each of them, and made its order granting to said defendants, and to each of them, thirty days within which to prepare and serve upon the plaintiff a draft of their, and his, proposed bill of exceptions upon writ of error herein, which time was thereafter extended by successive stipulations of the parties and orders of the Court to and including the 19th day of January, 1915.

Concerning the embodiment of exhibits in and as a part of this Bill of Exceptions, the respective parties hereto have stipulated and the Court has made its order as follows, to wit:

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation and Order Transmitting Certain Exhibits
and a Certain Affidavit to the United States
Circuit Court of Appeals for the Ninth Circuit
and Making the Same a Part of the Bill of
Exceptions Without Incorporation at Large
Therein. [2144—2075]**

IT IS HEREBY STIPULATED AND AGREED
by and between the respective parties hereto that all
United States' exhibits and all defendants' exhibits
and that certain affidavit of Elliott Johnson sub-
scribed and sworn to before Notary Public C. B. Ses-
sions on the 19th day of March, 1914, and introduced
in evidence upon defendants' motion for a new trial
hereof and containing that certain cartoon from
the "San Francisco Bulletin" entitled, "Breaking
Even—If the Consumers Ever Get a Chance to Sell
a Ton of Coal to the Coal Man," may be transmitted
in the original by the Clerk of the above-entitled
Court to the Circuit Court of Appeals for the Ninth
Circuit, and that said exhibits and said affidavit may
be included as and deemed a part of the Bill of Ex-
ceptions upon Writ of Error herein, with the same
effect in all respects as though incorporated at large
in said Bill of Exceptions.

Dated at San Francisco, California, this 19th day
of January, 1915.

THEO. J. ROCHE,
Assistant to the Attorney General of the United
States. [2145—2076]

PETER F. DUNNE,
STANLEY MOORE,
Attorneys for Defendants, James B. Smith, F. C.
Mills and E. H. Mayer.

Now, on this day, for good cause shown and pursuant to the above and foregoing stipulation, the Clerk of the above-entitled Court is hereby directed and ordered to transmit all of the United States' exhibits and all of the defendants' exhibits, and that certain affidavit of one Elliott Johnson specified in said above and foregoing stipulation, in the original, to the United States Circuit Court of Appeals for the Ninth Circuit;

AND IT IS HEREBY ORDERED that said exhibits and said affidavit shall be included as and deemed a part of the Bill of Exceptions upon Writ of Error herein with the same effect in all respects as though incorporated at large in said Bill of Exceptions.

Dated at San Francisco, California, this 19th day of January, 1915.

M. T. DOOLING,

Judge. [2146—2077]

The above and foregoing (including therein, also, the exhibits and affidavit provided for in the stipulation and order last above recited) contains all of the evidence of any and every character given, and all of the proceedings had upon the entire trial of this cause; and all of the instructions of the Court to the Jury; and all of the proceedings had and all of the evidence given upon defendants' motion for a new trial hereof; and all of the proceedings relating to the judgment and sentence pronounced and imposed upon the defendants herein, and upon each of them.

And, now, within the time allowed by law and the rules and orders of this Court, duly and regularly made in this behalf, the defendants, James B. Smith, F. C. Mills and E. H. Mayer, and each of them, hereby propose the above and foregoing as and for their Bill of Exceptions upon Writ of Error herein, and pray that the same be settled, allowed, signed and authenticated by this Court as in proper form and as conforming to the truth and as the true Bill of Exceptions herein, and that it be made a part of the record in this cause.

Dated at San Francisco, California, this 19th day of January, 1915.

PETER F. DUNNE,
STANLEY MOORE,

Attorneys for Defendants, James B. Smith, F. C.
Mills and E. H. Mayer. [2147—2078]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Notice of Presentation to Plaintiff of Defendants'
Proposed Bill of Exceptions.**

To the United States of America, Plaintiff, and to
Its Attorney, Theodore J. Roche, Esq., Assistant
to the Attorney General of the United
States:

You will please take notice that the above and foregoing constitutes and is the Proposed Bill of Exceptions of the defendants, James B. Smith, F. C. Mills and E. H. Mayer, and of each of them upon their and his Writ of Error in the above-entitled cause, and that said defendants and each of them will apply to the above-entitled court to settle, allow, sign and authenticate the same as in proper form and as conforming to the truth and as the true Bill of Exceptions herein, and to make it a part of the record in this cause.

Dated at San Francisco, California, this 15th day of October, 1914.

PETER F. DUNNE,
STANLEY MOORE,

Attorneys for Defendants, James B. Smith, F. C. Mills and E. H. Mayer. [2148—2079]

Due and legal service of the above and foregoing Proposed Bill of Exceptions by copy is hereby admitted this 15 day of October, 1914.

THEO. J. ROCHE,
Assistant to the Attorney General of the United
States. [2149—2080]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

Stipulation Re Bill of Exceptions.

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that the above and foregoing Proposed Bill of Exceptions upon Writ of Error herein has been presented within the time allowed by law and the rules and orders of this Court duly and regularly made in this behalf, and that the same is in proper form and conforms to the truth, and that it may be settled, allowed, signed and authenticated by this Court as the true Bill of Exceptions herein, and that it may be made a part of the record in this cause.

Dated at San Francisco, California, this 19th day of January, 1915.

THEO. J. ROCHE,

Assistant to the Attorney General of the United States.

PETER F. DUNNE,

STANLEY MOORE,

Attorneys for Defendants James B. Smith, F. C. Mills and E. H. Mayer. [2150—2081]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

Order Settling, Allowing, Signing and Authenticating Proposed Bill of Exceptions and Making the Same a Part of the Record.

The above and foregoing Bill of Exceptions, duly proposed by the defendants, James B. Smith, F. C. Mills and E. H. Mayer, and each of them, and duly agreed upon by the respective parties hereto, having been presented to the Court within the time allowed and required by law and by the rules and orders of this Court duly and regularly made in that behalf, is hereby settled, allowed, signed and authenticated as in proper form and as conforming to the truth and as the true Bill of Exceptions herein, and is hereby made a part of the record in this cause.

Dated at San Francisco, California, this 19th day of January, 1915.

M. T. DOOLING,

Judge of the District Court of the United States for
the Northern District of California.

[Endorsed]: Filed Jan. 19, 1915. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk.

Due service of the within Bill of Exceptions is hereby admitted this 15th day of October, 1914.

THEO. J. ROCHE,
Spec. Asst. U. S. Atty. General. [2151—2082]

[Verdict as to James B. Smith.]

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

No. 5233.

THE UNITED STATES OF AMERICA

vs.

JAMES B. SMITH et al.,

We, the jury, find James B. Smith, the defendant at the bar, guilty as charged.

THOMAS C. MAHER,
Foreman.

[Endorsed]: Filed Feb. 18th, 1914, at 12 o'clock and 05 minutes A. M. W. B. Maling, Clerk. By Francis Krull, Deputy Clerk. [2152]

[Verdict as to F. C. Mills.]

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

No. 5233.

THE UNITED STATES OF AMERICA

vs.

F. C. MILLS et al.

We, the jury, find F. C. Mills, the defendant at the bar, guilty as charged.

THOMAS C. MAHER,
Foreman.

[Endorsed]: Filed Feb. 18th, 1914, at 12 o'clock and 05 minutes, A. M. W. B. Maling, Clerk. By Francis Krull, Deputy Clerk. [2153]

[Verdict as to E. H. Mayer.]

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

No. 5233.

THE UNITED STATES OF AMERICA

vs.

E. H. MAYER et al.

We, the jury, find E. H. Mayer, the defendant at the bar, guilty as charged.

THOMAS C. MAHER,
Foreman.

[Endorsed]: Filed Feb. 18th, 1914, at 12 o'clock and 05 minutes A. M. W. B. Maling, Clerk. By Francis Krull, Deputy Clerk. [2154]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN L. HOWARD et al.,

Defendants.

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**(Motion for Order Vacating Verdict of Jury and
Granting New Trial.)**

Defendants herein, James B. Smith, Frederick C. Mills and Edward H. Mayer, do hereby move this Honorable Court for an order vacating the verdict of the jury herein, and granting to these defendants, and each of them, a new trial for the following causes, and each of them, materially affecting the substantial rights of these defendants and each of them:

1. Said verdict was contrary to the evidence adduced upon the trial hereof.

2. Said evidence was insufficient to justify said verdict.

3. Said verdict was contrary to law.

4. During the course of the trial hereof the jury received evidence out of court other than that resulting from a [2155] view of the premises involved herein.

5. The jury was guilty of misconduct by which a fair and due consideration of the above-entitled cause was prevented.

6. The Court erred in deciding questions of law arising during the course of the trial hereof, which errors were duly excepted to.

7. Counsel for the government was guilty of misconduct during the course of the trial hereof and upon the argument of said cause to the jury.

This motion is made upon the minutes of the Court, except as to the fourth and fifth grounds of motion, as to which this motion is made upon oral testimony and upon affidavits to be hereafter served and filed.

Dated: San Francisco, California, February 28, 1914.

McCUTCHEN, OLNEY & WILLARD,
STANLEY MOORE,
A. P. BLACK and
SAMUEL KNIGHT,

Attorneys for Defendants.

[Endorsed]: Filed Feb. 28, 1914. W. B. Maling,
Clerk. By Francis Krull, Deputy Clerk. [2156]

[Order Denying Motion for New Trial, etc.]

At a stated term of the District Court of the United States of America for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Thursday, the 19th day of March, in the year of our Lord, one thousand nine hundred and fourteen. Present: The Honorable M. T. DOOLING, Judge.

#5233.

UNITED STATES

vs.

JAMES B. SMITH et al.

Judgment.

The defendants, James B. Smith, F. C. Mills and E. H. Mayer, each being present in open court with their counsel, and counsel for the Government being present, the further argument on the motion for a new trial and for an order vacating the verdict of the jury, was resumed, and after hearing argument by Samuel Knight, Esqr., and E. J. McCutchen, Esqr., for defendants, and Theo. J. Roche, Esqr., and Matt I. Sullivan, Esqr., for the United States, and E. J. McCutchen in closing for the defendants, by the Court ordered that said motion be, and the same is hereby, denied, to which ruling the defendants then and there duly entered their exception. The said defendants being fully informed by the Court of the nature of the indictment herein against *the*, of their arraignment and pleas of not guilty, and the verdict

of the jury finding each of said defendants guilty, and no sufficient cause being shown or appearing to the Court why judgment should not be pronounced against them at this time, now here by the Court ordered: That defendant James B. Smith be imprisoned for the term of eighteen months in the State Penitentiary at San Quentin, Marin County, California, and that [2157] he pay a fine of Five Thousand Dollars, for the offense of which he stands convicted.

Further ordered that defendant F. C. Mills be imprisoned for the term of eighteen months in the State Penitentiary at San Quentin, Marin County, California, for the offense of which he stands convicted.

Further ordered that defendant E. H. Mayer be imprisoned for the term of one year in the County Jail of Alameda County State of California, for the offense of which he stands convicted.

Further ordered that bail of defendants be fixed as follows, pending stay of execution herein: As to defendant Jas. B. Smith in the sum of \$10,000; as to defendant F. S. Mills in the sum of \$5,000; as to defendant E. H. Mayer in the sum of \$5,000.

Further ordered that execution of judgment herein be stayed for a period of thirty days, and that said defendants be, and they are hereby, granted thirty days to prepare and file bill of exceptions. [2158]

[Judgment as to James B. Smith.]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

THE UNITED STATES OF AMERICA,

vs.

JAMES B. SMITH.

Convicted of a Conspiracy to Defraud the Government. Viol. Sec. 36, Crim. Code.

JUDGMENT ON VERDICT OF GUILTY.

Now, on this 19th day of March, A. D. 1914, the defendant James B. Smith, in his own proper person and with his counsel, Messrs. McCutchen, Olney & Willard, Samuel Knight, Stanley Moore and A. P. Black, Esqs., being present in open court, come Matt I. Sullivan and Theo. J. Roche, Esqs., Special Assistants to the Attorney General of the United States, and move the Court that judgment be pronounced in this cause; whereupon the defendant was duly informed by the Court of the nature of the indictment filed on the 27th day of February, A. D. 1913, charging him with the crime of conspiring to defraud the Government of the United States, in violation of Section 36, of the Criminal Code of the United States; of his arraignment and plea of not guilty; of his trial and the verdict of the jury on the 18th day of February, A. D. 1914, to wit: "We, the Jury, find James B. Smith, the defendant at the bar, Guilty as charged."

The defendant was then asked if he had any legal cause to show why judgment should not be pronounced against him, and no sufficient cause being shown or appearing to the Court, and the Court having denied a motion for a new trial, and a motion to set aside the verdict of the jury; thereupon the Court rendered its judgment;

THAT WHEREAS, the said James B. Smith having been duly convicted in this Court of the crime of conspiring to defraud the [2159] Government of the United States.

IT IS THEREFORE ORDERED AND ADJUDGED that the said James B. Smith be imprisoned for the term of eighteen (18) months in the State Penitentiary at San Quentin, California, and that he pay a fine of \$5,000.

JUDGMENT ENTERED this 19th day of March
A. D. 1914.

W. B. MALING,
Clerk.

By C. W. Calbreath,
Deputy Clerk.

Entered in Vol. 6, Judg. and Decrees, at page 38.
[2160]

[Judgment as to F. C. Mills.]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

THE UNITED STATES OF AMERICA,

vs.

F. C. MILLS.

Convicted of a Conspiracy to Defraud the Government. Viol. Sec. 36, Crim. Code.

JUDGMENT ON VERDICT OF GUILTY.

Now on this 19th day of March, A. D. 1914, the defendant F. C. Mills, in his own proper person and with his counsel, Messrs. McCutcheon, Olney & Willard, Samuel Knight, Stanley Moore and A. P. Black, Esqs., being present in open court, come Matt I. Sullivan and Theo. J. Roche, Esqs., Special Assistants to the Attorney General of the United States, and move the Court that judgment be pronounced in this cause; whereupon the defendant was duly informed by the Court of the nature of the indictment filed on the 27th day of February, A. D. 1913, charging him with the crime of conspiring to defraud the Government of the United States, in violation of Section 36, of the Criminal Code of the United States; of his arraignment and plea of Not Guilty; of his trial and the verdict of the jury on the 18th day of February, A. D. 1914, to wit: "We, the Jury, find F. C. Mills, the defendant at the bar, Guilty as charged."

The defendant was then asked if he had any legal cause to show why judgment should not be pronounced against him, and no sufficient cause being shown or appearing to the Court, and the Court having denied a motion for a new trial, and a motion to set aside the verdict of the jury; thereupon the Court rendered its judgment;

THAT WHEREAS, the said F. C. Mills, having been duly convicted in this court of the crime of conspiring to defraud the [2161] Government of the United States;

IT IS THEREFORE ORDERED AND ADJUDGED that the said F. C. Mills be imprisoned for the term of Eighteen (18) months in the State Penitentiary at San Quentin, California.

Judgment entered this 19th day of March, A. D. 1914.

W. B. MALING,

Clerk.

By C. W. Calbreath,

Deputy Clerk.

Entered in Vol. 6, Judg. and Decrees, at page 39.
[2162]

[Judgment as to E. H. Mayer.]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

THE UNITED STATES OF AMERICA,

vs.

E. H. MAYER.

Convicted of a Conspiracy to Defraud the
Government. Viol. Sec. 36, Crim. Code.

JUDGMENT ON VERDICT OF GUILTY.

Now, on this 19th day of March, A. D. 1914, the defendant E. H. Mayer, in his own proper person and with his counsel, Messrs. McCutcheon, Olney & Willard, Samuel Knight, Stanley Moore and A. P. Black, Esqs., being present in open court, come Matt I. Sullivan and Theo J. Roche, Esqs., Special Assistants to the Attorney General of the United States, and move the Court that judgment be pronounced in this cause; whereupon the defendant was duly informed by the Court of the nature of the indictment filed on the 27th day of February, A. D. 1913, charging him with the crime of conspiring to defraud the Government of the United States, in violation of Section 36, of the Criminal Code of the United States; of his arraignment and plea of Not Guilty; of his trial and the verdict of the jury on the 18th day of February, A. D. 1914, to wit: "We, the Jury, find E. H. Mayer, the defendant at the

bar, Guilty as charged.”

The defendant was then asked if he had any legal cause to show why judgment should not be pronounced against him, and no sufficient cause being shown or appearing to the Court, and the Court having denied a motion for a new trial, and a motion to set aside the verdict of the jury; thereupon the Court rendered its judgment;

THAT WHEREAS, the said E. H. Mayer having been duly convicted in this court of the crime of conspiring to defraud the [2163] Government of the United States;

IT IS THEREFORE ORDERED AND ADJUDGED that the said E. H. Mayer be imprisoned for the term of One (1) year in the Alameda County Jail, Alameda County, California.

JUDGMENT ENTERED this 19th day of March, A. D. 1914.

W. B. MALING,
Clerk.

By C. W. Calbreath,
Deputy Clerk.

Entered in Vol. 6, Judg. and Decrees, at page 40.
[2164]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN L. HOWARD et al.,

Defendants,

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

Petition for Writ of Error.

Now comes James B. Smith, F. C. Mills and E. H. Mayer, defendants herein, and bring this their Petition for a Writ of Error to the District Court of the United States, for the Northern District of California, and respectfully show:

That on the 19th day of March, 1914, there was rendered and entered in the above-entitled court a judgment and sentence against them, the above-named defendants, and each of them, whereby defendant James B. Smith, was adjudged and [2165] sentenced to be imprisoned for the term of eighteen (18) months in the State Penitentiary at San Quentin, Marin County, California, and to pay a fine of

five thousand (5,000) dollars; and whereby defendant, F. C. Mills, was adjudged and sentenced to be imprisoned for the term of eighteen (18) months in the State Penitentiary at San Quentin, Marin County, California; and whereby defendant, E. H. Mayer, was adjudged and sentenced to be imprisoned for the term of one (1) year in the County Jail of Alameda County, State of California, in which judgment and sentence against said defendants, and each of them, and in the proceedings had prior thereunto in this cause, certain errors were committed to the prejudice of said above-named defendants, and of each of them, all of which will more in detail appear from the Assignment of Errors which is filed with this Petition.

WHEREFORE, said above-named defendants, and each of them, pray that a Writ of Error may issue in their behalf out of the United States Circuit Court of Appeals, for the Ninth Circuit, for the correction of the errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said Circuit Court of Appeals, and that all further proceedings in the above-entitled District Court be suspended, stayed and superseded, and that sentence and execution herein be stayed until the final disposition of said Writ of [2166] Errors in said United States Circuit Court of Appeals, for the Ninth Circuit.

Dated: May 18th, 1914.

McCUTCHEN, OLNEY & WILLARD,
STANLEY MOORE,
A. P. BLACK,
SAMUEL KNIGHT,

Attorneys for Defendants James B. Smith, F. C.
Mills and E. H. Mayer.

[Endorsed]: Filed May 18, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [2167]

*In the District Court of the United States, for the
Northern District of California, First Divi-
sion.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN L. HOWARD et al.,

Defendants.

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

Assignment of Errors.

Now come defendants, James B. Smith, F. C. Mills
and E. H. Mayer, in the above-entitled cause, and,
in connection with their Petition for a Writ of Error

herein, make the following Assignment of Errors which they aver occurred upon the trial of said cause, to wit:

I.

The Court erred in overruling the motion of said defendants, and each of them, for an order dismissing the indictment against them, and each of them, and for an order directing the jury to return a verdict of not guilty in respect to all and each of them.

To which ruling of the Court said defendants then and there duly and regularly excepted.

II.

The Court erred in rendering judgment and imposing sentence [2168] upon defendant, James B. Smith, for the reason that said judgment and sentence and the verdict of the jury herein upon which said judgment and sentence were based were not supported by the evidence introduced herein.

III.

The Court erred in rendering judgment and imposing sentence upon defendant, F. C. Mills, for the reason that said judgment and sentence and the verdict of the jury herein upon which said judgment and sentence were based were not supported by the evidence introduced herein.

IV.

The Court erred in rendering judgment and imposing sentence upon defendant, E. H. Mayer, for the reason that said judgment and sentence and the verdict of the jury herein upon which said judgment and sentence were based were not supported by the evidence introduced herein.

V.

The Court erred in permitting the Special Assistants to the Attorney General of the United States, counsel for the plaintiff in this cause, to make the following statements in the course of, and as a part of, their arguments to, and in the presence of, the jury, and in omitting and neglecting to instruct the jury to disregard said following statements, to wit:

(Excerpts from argument of Theodore J. Roche, Esq.)

Gentlemen of the jury, we represent the majesty of the law of these United States, and it is proper for me at this time to tell you exactly what the attitude of this Government is. The Government in this case tells you, gentlemen of the jury, that upon the testimony that has come in during the trial of this case there cannot be any question at all about [2169] the guilt of these defendants, and the Government in this case insists upon the testimony that has come before you, gentlemen of the jury, that you in the performance of your duty bring in a verdict of guilty and we say to you, gentlemen of the jury, without hesitation, that if upon the testimony which has been taken an acquittal should result, that that result will unquestionably be an absolute miscarriage of justice; and that it will be futile for the Government in a case such as this at any time in the future to attempt to convict the officials of a wealthy corporation for defrauding other concerns which are defrauded by reason of the frauds committed against the Government itself. * * *

During the month of August, 1912, Dave Powers,

who had at that time just left the County Jail in Alameda, where he had expiated an offense similar in kind to one of the offenses committed by the officials of this company, only he was not backed up by a million dollars worth of business, went down to one of the officials of the Pacific Mail Steamship, etc.

* * *

David Powers finally went down to one of his friends who was connected with one of the newspapers in San Francisco, told him what his situation was, told him then, gentlemen of the jury, some of the facts which have been put in evidence, and which by the way at that time was a public scandal, smelling to the high Heavens, and finally was advised by him, when he told him that he was in fear of being brought before the Grand Jury, that is was his duty to go down and tell the United States Government officials exactly what he knew about these frauds.

* * * [2170]

Why the prosecution in this case has no axe to grind and it has no desire to prosecute innocent individuals. The Government in this case concluded that the men were guilty and hence this prosecution. This great Government of ours, your Government as well as mine, gentlemen of the jury, is not in the business of suborning witnesses to commit perjury, or trying to bring about the conviction of innocent officials as a result of or upon perjured testimony.

* * *

Now it has again been said, gentlemen of the jury, that the percentage of shortage and overage is so small that the Western Fuel Company would not at-

tempt to defraud these overages. I say to you, gentlemen of the jury, that this general percentage, the annual percentage, as well as the general percentage, is not a controlling factor in this case. * * *

It has been claimed here time and time and time again that the amount out of which the government claims it was defrauded amounts to only \$45,000 or thereabouts; \$45,000 to this million dollars corporation counsel for the defendants say is a very small amount of money. Why, this immense corporation, gentlemen, doing more than a million dollars of business a year in foreign coal alone, paying its dividends of 10 per cent a year, having a plant, gentlemen of the jury, which still is of the same value, if not a greater value at this time than it had at the time it was purchased, although according to the financial reports received here in evidence, they have marked off each year 25 cents a ton for depreciation, they say that this great big corporation would not stoop so low as to defraud the United States Government out of \$45,000. Why, I am willing, gentlemen of the jury, to admit that the Western Fuel [2171] Company did not, nor did any of its officials enter into this conspiracy and do those things for the sole and exclusive purpose of defrauding the United States Government out of \$45,000. But is there anyone within the range of my voice that believes for a single moment, that that was the purpose, the sole purpose, the exclusive purpose of this conspiracy. Why, don't you know, gentlemen of the jury, that every time they defrauded the United States Government out of 65 cents representing drawbacks, or 45 cents under

the last Tariff Act, they were defrauding the Pacific Mail Company and other companies running American vessels foreign bound out of the value of a ton of coal? Don't you know, gentlemen of the jury, that their defrauding of the United States was only a part of the conspiracy into which the officials of the Western Fuel Company entered? Don't you know, gentlemen of the jury, that the object of this conspiracy, gigantic as it was, was not alone to defraud the United States Government, but was for the purpose of defrauding these shipowners out of the value of coal with which they were charged, and which in fact they never received? Don't you know, gentlemen of the jury, that it was for the purpose of defrauding the United States Government out of coal which was supposed to be laden upon our transports, transports, gentlemen of the jury, engaged in protecting the lives and property of these United States, and upon other Government vessels? Don't you know that the conspiracy was laid for the purpose, among other things, of defrauding the United States Government out of import duties and defrauding the United States Government out of drawbacks, and likewise, gentlemen of the jury, of defrauding shipowners [2172] out of the freight to which they were otherwise entitled, and likewise, gentlemen of the jury of defrauding the consignees of cargoes purchased and taken over by the Western Fuel Company, out of the value of coal represented by the shortage between the bill of lading and invoice weights and the out-turn weights, that \$45,000, gentlemen of the jury, is only an insignificant amount

compared to the amount realized by the officials of the Western Fuel Company as a result of the fraud perpetrated by them and by it against the United States Government and these other officials. Why, I can add up, gentlemen of the jury, and if I had time I would do it, moneys which, under the testimony in this case were illegally exacted by the Western Fuel Company, amounting upwards of three-quarters of a million dollars. And it is that three-quarters of a million dollars, gentlemen of the jury, that permitted the Western Fuel Company to pay 10 per cent dividends per year, and still at the end of 8 or 9 years, when they had practically paid for this plant, retain, gentlemen of the jury, a plant which today is worth just as much if not a great deal more than the amount for which it was originally purchased. So you see, gentlemen of the jury, that this small insignificant amount of \$45,000 a fabulous amount to a great many of us, but a very small amount to the Western Fuel Company and its active Vice-president and Manager, etc. * * *

Don't you know, gentlemen of the jury, that this cry of big business, every time a Government official treads upon the toes of one of these officials, or employees of one of these big barge corporations,—has it come to pass, gentlemen of the jury, that an official connected with one of these large corporations can come into court and say “it is true that I [2173] have committed a fraud, it is true that I have sold 5 per cent more coal than the coal which we have received, but because that coal is only a small proportion of the great volume of business which we have

done we ought to be immune from punishment," and in fact immune from indictment? Has it come to pass, gentlemen of the jury, that a man in the position of the defendant James B. Smith can come into court, because he is connected with a large corporation doing a million dollars worth of business a year and make a defense of that kind, when at the same time if another man was not backed up by a million dollar corporation, by friends, by social connections, by affluence, he would have to come into court and plead guilty to this? Has the time arrived in this country, gentlemen of the jury, when there is one law for the rich and another law for the poor? Why, during the trial of this case, gentlemen of the jury, upon at least several of the occasions you yourself have witnessed unfortunates unprotected by half a dozen attorneys, come before his Honor upon the bench and plead guilty to conspiring against the laws of the United States, either by importing a small quantity of opium into this country, 5 or 10 or 15 lbs., or by attempting to counterfeit some of the moneys coined by the United States Government? Is it true that if one of these men had been doing a million dollars worth of business or was an employee of a million dollar corporation, that he could come into this court and say, "it is true that I have done these things but I am not guilty because the value of the opium smuggled into this country or the money value of the coins which it is claimed that I counterfeit represent only a small percentage of the great volume of business that I have [2174] done"?

Dave Powers, gentlemen of the jury, was sent to

the County Jail of Alameda County for bringing into the United States a small quantity of opium upon which either the duty had not been paid or the introduction into the United States of which was at that time prohibited; but of course, gentlemen of the jury, he was not a million dollar financier. He did not have a million dollar corporation behind him; he did not have million dollar friends to intercede for him; and therefore of course when he was brought into this courtroom he had to plead guilty. * * *

It is your sworn duty to return a verdict of guilty in this case irrespective of what the volume of business has been which from time to time has been done by the Western Fuel Company, and irrespective too, gentlemen of the jury, that some of the defendants in this case may be connected with a million dollar corporation, or that the amount out of which the United States Government has been defrauded represents only a small percentage of the volume of business done from time to time by this large corporation.
* * *

So, in 1904, within one year after this great corporation commenced doing this million dollar volume of business, we find it ripping up and removing decking and planking, etc. * * *

They themselves have admitted, Mr. Olney in an opening statement, and their paid advocates in the nature of experts on the stand, that you cannot have an overage exceeding 5 per cent, from these barges upon any legitimate theory. * * * [2175]

The defendants in this case, not satisfied with bringing here the President of the Stanford Uni-

versity to testify as an expert, not satisfied with bringing here Professor Folsom who said the only thing he knew about coal was that it was black and it would burn, going away back East to Illinois and to Ohio for the purpose of bringing here experts at an enormous and fabulous salary, etc. * * *

And I say to you in closing, gentlemen of the jury, just as I said to you in opening, that if there is any other verdict in this case excepting a verdict of guilty, and a verdict of guilty as to every defendant in this case, including the defendant Edward J. Smith, who did not testify concerning many facts attributed to him and which were within his knowledge, then I say to you, gentlemen of the jury, that the Government will conclude that a miscarriage of justice has followed. * * *

(Excerpts from argument of Matt I. Sullivan, Esq.)

I was not at all surprised at the argument of the two gentlemen representing the defendants in this case. I have heard the same kind of argument many, many times during a period of over 30 years practice. It is the same kind of an argument that is always produced by counsel, well paid, representing wealthy and powerful clients. * * *

As usual, when counsel represents a powerful or wealthy corporation, Mr. Moore and Mr. McCutchen appealed to the constitution and the laws of the country. They say that if you are influenced by the appeal of Mr. Roche, or the similar appeal of Mr. Sullivan, there is danger of the Government being undermined, there is danger of injustice being done.

Every [2176] time I have heard that argument during the last thirty years or more, I have become indignant, because that is the style of oratory always resorted to by counsel representing the character of clients involved in this case. They say the law is made for the rich and the poor; we admit it. They say that the law should be administered alike to the rich and the poor; we admit it. They say that if it is not so administered, the interests of our country will totter and crumple. That is the language of Mr. Moore. Now, gentlemen, I don't believe in making an appeal to any jury, or to any court to find any man guilty or to inflict a penalty upon him because he happens to be a man of wealth, a man of affluence, a man of social position. But I do say that before any court, or before any jury, no man, by reason of his wealth, or affluence or position in society should stand a better show of having a fairer trial than the poor man referred to by Mr. Moore, who may be a wandering fugitive from the mountains. * * *

Now, gentlemen of the jury, here are defendants, four of them, now—originally seven, represented by seven of the leading lawyers of the State; admittedly this is a powerful and a wealthy corporation, a million dollar corporation, as stated by Mr. Roche, because the concern is capitalized for that amount.

* * *

Now, gentlemen of the jury, that old, old chestnuttty argument was repeated yesterday, and will be repeated until the crack of doom; it has been repeated ever since I attended court; Don't, gentlemen of the jury, convict these men because they are wealthy,

don't convict them because they are powerful. That is their argument. * * *

Now, gentlemen of the jury, it is about as difficult [2177] for a criminally rich man to enter the penitentiary against his will as it is for a loaded camel to pass through the eye of a needle, and in that respect, and that only, there appears to be a distinction between the penitentiary and heaven. The jails are full of these wandering fugitives, to use the language of Mr. Moore; the jails are full of defendants who have violated the law; full of criminals who were not able to employ seven of the ablest lawyers in the country; full of men who had not the means to secure counsel and who could bring experts thousands of miles from their place of occupation to hoodwink and fool a jury into believing that black was white, and that white was no color at all.

Now, gentlemen of the jury, I stand by everything that Mr. Roche stated in his opening argument. I will not on his behalf, or on behalf of the Government, recant a single word uttered by him. He expressed his true convictions, as I am now expressing my true convictions concerning the defense in this case, and the manner of the defense and the facts of the case. * * *

But then, of course, they are corporation lawyers, they are honorable and high in their profession. Oh, they can do those things, but men like Roche and myself who have been battling all our lives for the cause of people not connected with corporations, are guilty of most reprehensible conduct because we pre-

sent the facts, the plain unvarnished facts to the jury.

Now, when a man on the payroll of a defendant comes before a jury and testifies to facts in support of the defense any jury of ordinary understanding is justified in viewing with caution the testimony which he gives. But the Government has produced [2178] witnesses here all of whom are absolutely disinterested. Counsel for the defense would have you believe that this great Government is engaged in the business of suborning witnesses. They would have you believe that witness after witness was brought here into court and induced to perjure himself solely for the purpose of securing the conviction of men whom the defendants' counsel call innocent. Now, that is inconceivable, gentlemen. The Government of the United States or its representatives don't do that. They have not done it in this case and they wouldn't do it in any other case if they lived a thousand years. If there was any bribery or corruption in this case or suborning of testimony it must be on the side of the defense. The defendants are fighting to save their names and to save themselves from punishment. The Government has no interest in this case excepting to see that the laws are enforced. It is not an agreeable duty on the part of the Government to prosecute men who violate the laws, but it is necessary to do so; some must do it; there is no pleasure in attorneys prosecuting men who are charged by the Government with the violation of its laws, but it is a duty that must be performed, and in this case Mr. Roche and I are

performing our duty as best we know how. The Court itself takes no pleasure in imposing penalties upon men who are convicted of crime, but the Court must do it. If people committing crime are allowed to go free through pity or sympathy or bias or prejudice, why, gentlemen, in a very short time indeed you might as well open the jails and have none at all. Society's protecting demands that people who violate the laws and defraud the Government shall be prosecuted and if guilty shall be punished, and we are simply acting as the agents of the Government in asking you to [2179] perform your duties as jurors and to see that these defendants who have violated the laws meet with a verdict of guilty at your hands. * * *

With reference to the difference between the invoice and B/L weights on importation, Mr. Sullivan said:

“Upon that particular charge there is no doubt in the mind of any man familiar with the evidence in this case that the defendants are guilty. There should not be any shortage,” etc. * * *

Again: “You can see very readily with coal selling at retail for \$10 a ton, 20,000 tons would amount to \$200,000.” * * *

Did the Western Fuel Company take advantage of these opportunities? There is no doubt about it. Do you think that the Western Fuel Company or J. B. Smith would resist an opportunity of that kind? You heard J. B. Smith upon the stand make a declaration, and it shows his character. It is the only time in his examination where his instinct got

the better of his reason. I asked him on cross-examination, Do you remember the time the "Aztec" was being loaded from the barge "Melrose" and Captain Lindley of the "Aztec" complained that the coal that you were offering reminded him of Telegraph Hill rocks; he complained that they were rocks and not coal; and that thereupon Eddie Powers took that barge away from that same ship, the "Aztec" and brought alongside the same ship another barge containing the identical kind of coal and that was put on board the "Aztec"? I said to Mr. Smith, "Don't you remember that circumstance, and didn't you say to Eddie Powers, 'You are a damn good man.' " and he laughed right out and said, "Well, I may have, I may have, and if he did that, he was"—[2180] and he laughed—he thought he was a good man, any man who can get the best of those fellows down there is a good man, and if he did that I say he is a good man, a first-class man. That was a declaration made by him during his own examination, and showed his true character.

Here was a representative of the Pacific Mail Steamship Company, entrusted with the duty of getting the proper kind of coal upon these liners which carried hundreds of people and transported thousands of people across the Pacific, complaining that he was getting inferior coal, getting a lot of rocks that would not burn and would not heat the furnace—the evidence taken upon the trial does not show that any such transaction ever took place, and the affidavits of Chisholm and of Lindley, the "Aztec's" chief engineer, offered on motion for new

trial, corroborate this parenthetical statement)—, and Mr. Smith sanctions this act of his own employee, allows that barge of rotten coal, bad, rocky coal, to be taken away and another barge of the same character of coal put alongside of the vessel and that coal put in the ship and that coal used for heating the boilers on the ship, and that coal charged for as first-class coal. He sanctions that. He thinks that is proper. He thinks it is damn smart, to use his own language.

Now, gentlemen, if a man is guilty of an act of that kind, transferring to one of these ocean liners carrying hundreds of men and women and children across the ocean, if he tolerates or instructs an act of that kind to be done, don't you think that he would allow these acts to be committed by Mr. Mills and Mr. Mayer, and his employees, and take the coal consigned to consignees, or to take the coal consigned to himself for the purpose of avoiding duties and allowing that [2181] coal, without being weighed, to drop down into the bunkers below the hoppers and to drop down into the open spaces between the tracks and between the tracks and the side of the bunker? A man who would commit and would admit the commission of the act which he admitted on the stand in relation to the "Aztec" is capable of committing every one of these crimes charged against him in this indictment. * * *

There was a shortage of 62,000 tons. Take the ordinary price charged at retail by the Western Fuel Company, that would be about half a million dollars, at \$8 a ton, a little less than half a million dollars.

Now, gentlemen, that money was dishonestly made. That coal did not naturally increase from the time it was transported from the mine up to the time it was sold. I don't care what these experts say.

* * *

His reports (speaking of those of Mr. Powers, chief chemist of Santa Fe Railroad Co.) are adopted by Mr. Parr, himself, who has come 1000 miles or more to California to bamboozle the jury into the belief that coal will increase in weight while stored in a yard, instead of decreasing in weight. * * *

Anybody knows that if you pour a lot of water upon a matter more or less porous it is going to increase in weight. It was not necessary to pay this man a large sum of money to prove to you gentlemen that putting water in milk increases its volume, or putting water in coal will, at least for a short time, increase the weight of the coal. Everybody knows that. * * *

If the Government representatives had employed a man to make a test which showed the fact, and the Government representatives concealed the report made by that expert, if they [2182] kept it in their possession, and put him on the stand to testify to facts directly contrary to the facts which he knew existed, directly contrary to the facts developed by his own experience, and by his own experiments, then the Government representatives would be entitled to all the abuse and all the denunciation heaped upon them by the high-priced lawyers who came before you to make such frivolous appeals. * * *

In the meantime, mind you, gentlemen, Professor

Parr, the noted chemist and analyst of the United States was working for \$25 a day and expenses paid.

And in speaking of Professor Somermeier also Mr. Sullivan said:

“Here are two of the most noted experts in the country, under pay from the defendants, and the defendants, most honorable men, through their counsel, most honorable men, go to an ignoramus (meaning Folsom) and ask him to analyze the coal, a man who knows no more about coal analysis than you or I, and he so admits.” * * *

Now, gentlemen, little things of that kind show the absolute insincerity of the defense, and their high priced learned lawyers who come before you and before courts denouncing representatives of the Government for unprofessional conduct. * * *

But if David Powers were everything he is painted to be, if Eddie Powers is everything he is depicted to be by the defense in this case, either of them is an infinitely better man than any one of those noted scientists. For coin! They are bought for money. Dave Powers has not been bought for money. [2183] Eddie Powers has not been bought for money. But they were bought for money to come here to perjure themselves and to fool a jury and to defraud the Government. There is no question about that. Folsom, for his \$600 per month, knowing nothing about coal, comes before you and discourses learnedly about plats which he said he made; you believe that he prepared them himself; he discourses learnedly about tests and about analyses which he makes you believe he did himself.

Parr takes the stand and under oath denies his written statement made long ago. He publishes books of instruction to the world, for the instruction of coal miners and coal dealers, and in these very books written not for high price payment, not for big payment, but for the instruction of the world, he comes here before this jury, and for \$25 a day and expenses paid, he perjures himself, contradicts the statements contained in his published books and tries to fool everyone of you gentlemen into the belief that coal will increase a phenomenal extent in weight in 5 or 6 days.

Let them denounce Dave Powers, let them denounce Eddie Powers. But I would not give the little finger of Dave Powers for the whole carcass of a university graduate and professor who for the purpose of earning a few dollars comes before a court and misrepresents the facts and tries to fool the jury and to bamboozle the jury into believing things that are not so. * * *

Now, gentlemen, don't you think that defendants who would put these humbugs of experts on the stand, pay them princely salaries for the purpose of preventing the defendants from going to the state penitentiary, would for the sake of their own liberty, [2184] for the defense of their own case, bring before the jury at least 4 or 5 or half a dozen of the several hundreds of shovellers who did the crooked work for the Western Fuel Company? * * *

Mr. Powers was put upon the stand first a month and a half ago. At that time he was not asked if he made this statement to Mr. Foran, that he would

get J. B. Smith if it took it (him) all his lifetime. He was not asked the question at that time at all. And why? Because counsel knew that he never made any such statement, because in fact he never did. * * *

The Pacific Mail Company is now being robbed annually of many thousands of dollars. It has been robbed by the Western Fuel Company during the last 6 or 7 years of over a quarter of a million dollars. There is no question about that. Between \$40,000 and \$50,000 a year. The books of the Western Fuel Company show that. Mr. Schwerin is the manager and vice-president of the company. On the Pacific Coast he is the Lord of the Pacific Mail. He must know that his company is being robbed, because he is a man of intelligence. * * *

Each one of you in response to questions propounded by me said that you would not by one jot or tittle be influenced by pity or sympathy for the defendants, or any of them, or pity or sympathy for the members of their families. Pity or sympathy have no place in the jury-box. You all swore most positively that you would cast aside all feelings of sympathy and all feelings of pity. I believed you then and I believe now that when you return to the jury-room you will follow the dictates of your conscience and your judgment, that you will keep your [2185] word and will not be influenced by pity or sympathy, and that after giving this case the consideration which it deserves, I am satisfied that your verdict must be one of guilty against all of the defendants.

VI.

The jury herein, and certain members thereof, committed manifest error and misconduct prejudicial to a fair and due consideration of the above-entitled cause, and to the great prejudice of the substantial rights of the defendant herein, by receiving evidence out of court prejudicial to these defendants, and each of them, other than that resulting from a view of the premises involved herein; and in this respect the aforementioned defendants particularly specify the following evidence set forth in affidavits filed on behalf of these defendants in support of their motion for a new trial hereof:

(1) The following entitled newspaper articles or editorials appearing on the date specified in the San Francisco "Examiner": "Coal Shipments and Atmosphere," in the issue of December 17, 1913; "Scientific Discovery Ruined by Cupid," in the issue of December 18, 1913; "He Earned the Money," in the issue of February 11, 1914.

(2) The newspaper article or cartoon entitled "Breaking Even. If the Consumers ever get a Chance to Sell a Ton of Coal to the Coal Man."

(3) The various articles in the newspapers of San Francisco and the neighboring cities purporting to state the proceedings taken upon the trial hereof.

(4) The newspaper article appearing in the Oakland "Tribune," in the issue of Sunday, February 8, 1914, entitled "Recalls Sugar Fraud History," and signed "The Knave." [2186]

VII.

The jury herein, and certain members thereof,

committed manifest error and misconduct prejudicial to a fair and due consideration of the above-entitled cause, and to the great prejudice of the substantial rights of the afore-named defendants herein, in each of the following respects, as shown by the affidavits hereinbefore referred to:

(1) By reading and circulating, or reading or circulating the aforesaid newspaper article entitled "Coal Shipments and Atmosphere,"

(2) Also the aforesaid newspaper article entitled "Scientific Discovery Ruined by Cupid."

(3) Also the aforesaid newspaper article entitled "He Earned the Money,"

(4) Also the aforesaid newspaper article or cartoon entitled "Breaking Even. If the Consumers ever get a Chance to Sell a Ton of Coal to the Coal Man,"

(5) Also the aforesaid newspaper article entitled "Recalls Sugar Fraud History,"

(6) By discussing said cause among themselves, contrary to the Court's instructions, before said cause was finally submitted to them for decision, and particularly by statements prejudicial to these defendants made by one or more of said jurors to others of said jury to the effect that said cause, or the method of conducting the business of the Western Fuel Company, with which these defendants were connected, or the method of operation of these defendants was crooked and similar to that alleged to have been employed by the American Sugar Company or Sugar Trust, [2187]

(7) By intimidation practised upon the juror,

R. E. Herdman, so as to induce or compel said juror to join in a verdict of guilty against the defendants herein named, and each of them.

VIII.

The Court erred in admitting in evidence over the objection of the defendants the following statement or document, to wit:

United States Exhibit Number 22, being a statement or document dated April 1, 1906, and entitled: "Western Fuel Co., summary of receipts, sales and profits, Oakland Depot, coal account." The full substance of the evidence thus admitted is set out in the following extract from the testimony of Witness Norcross under direct examination by counsel for the plaintiff:—

Mr. ROCHE.—“ * * * I ask you to look at that” (referring to the above-entitled document) “and state whether that statement shows the quantity of coal on hand at the Oakland Depot on the 1st of April, 1906. A. Yes, it does.

* * * * *

Mr. ROCHE.—“We offer these documents” (referring to the above-entitled document and to one similar in character but relating to San Francisco instead of Oakland, and mentioned in the next Assignment, viz.: Assignment IX) “in evidence, may it please the Court.”

Mr. McCUTCHEN.—Mr. Roche, do you claim that these documents were seen by these defendants?

Mr. ROCHE.—By what defendants?

Mr. McCUTCHEN.—By any of the defendants.

Mr. ROCHE.—I don't know whether they were seen, or not, "We are offering them for the purpose of showing the quantity of coal on hand on the 1st day of April, 1906; and we intend to follow this up by showing from the records of the Western Fuel Company the amount of coal received between that date and the 31st of December, 1912.

Mr. McCUTCHEN.—Unless counsel says, if your Honor please, that he proposes to show that these papers were seen by these defendants, we object to the offer.

Mr. ROCHE.—Of course, counsel understands that, may it please the Court—what is the ground of your objection, Mr. McCutchen?

Mr. McCUTCHEN.—That the defendants are not bound by these papers unless they saw them. You say you do not propose to show that the defendants ever saw them. Unless you do they are certainly not admissible against the defendants.

Mr. ROCHE.—This is the situation, if your Honor please: It is necessary for the Government in this case to show, among other things, first, the quantity of coal the Western Fuel Company had on hand on a given date; the quantity of coal received by the Western Fuel Company from that date to another given date, which we will arbitrarily fix at this time as the 31st day of December, 1912; and likewise to show the quantity of coal sold between those two dates, and the quantity of coal on that date, for the purpose of establishing the excess of coal over the importations; in other words, that the Western Fuel Company did sell during that period of time a num-

ber of tons of coal above and beyond the tonnage of coal received by it. Now, of course, it is true, may it please the Court, that a [2189] record which is not brought to the attention of one of the defendants, is not ordinarily admissible in evidence, but that of itself does not prevent us establishing by testimony which is admissible and which is in fact practically the only testimony available, by the records of the company, the quantity of coal which was in the possession of the company, the quantity of coal which was subsequently received by the company, and likewise the quantity of coal which was disposed of by the company during that same period of time.

Mr. McCUTCHEN.—We don't put our objection upon that ground but we do object that these documents are not admissible against these defendants, if the defendants have never seen them.

Mr. ROCHE.—Then as long as counsel does not object upon the ground that the evidence is not the best evidence, and that these entries are not original entries, may it please the Court, it occurs to us that the objection must be overruled because they are being offered at this time for the purpose of establishing what appears to exist upon their face.

The COURT.—The objection is overruled.

Mr. McCUTCHEN.—We note an exception."

To which ruling of the Court, admitting in evidence said United States Exhibit Number 22, the defendants, as hereinbefore indicated, then and there duly and regularly excepted.

IX.

The Court erred in admitting in evidence, over the objection of the defendants, the following statement or document, to wit:

United States Exhibit Number 23, being a statement or [2190] document dated April 1, 1906, entitled "Western Fuel Co., summary of receipts, sales and profits, San Francisco depot, coal account," and, as indicated by the quotation below, similar in character to the above-mentioned United States Exhibit Number 22 (see Assignment VIII, *supra*), and objected to by the defendants upon the same ground as was urged in objection to said United States Exhibit Number 22 (Assignment VIII, *supra*):

"Q. Now, I direct your attention to another sheet similar in kind, only relating to the San Francisco depot, entitled 'Western Fuel Co., summary or receipts, sales and profits, San Francisco depot, coal account,' and ask you whether that sheet indicates, among other things, the amount of coal on hand in the San Francisco Depot belonging to the Western Fuel Company on the 1st day of April, 1906?

A. That is correct.

Q. And this was compiled as already indicated by you and in the same manner as the exhibit last offered in evidence was compiled; is that correct?

A. Yes.

Mr. ROCHE.—We offer this document in evidence.

Mr. McCUTCHEN.—We make the same objection, I suppose that that objection can be considered as made to all these offers, and the objection overruled and an exception taken.

Mr. ROCHE.—Yes, we will stipulate that; that is, the objection proceeds on the same grounds already stated” (referring to the grounds stated in the extract set out above in Assignment VIII).

“Mr. McCUTCHEN.—Yes, is that satisfactory, [2191] your Honor?

The COURT.—Very well.”

To the ruling of the Court, admitting in evidence said United States Exhibit Number 23, the defendants, as hereinbefore and above indicated, then and there duly and regularly excepted.

NOTE. The following extract from the aforementioned testimony of the witness Norcross referring to United States Exhibit Number 22 and to United States Exhibit Number 23 further explains the substance of the evidence admitted by said exhibits (see Assignments VIII and IX) over the defendants’ objection:

“Q. Do these figures indicate all of the foreign coal on hand and in the possession of the Western Fuel Company, both in San Francisco and Oakland, on the 1st day of April, 1906?

A. It indicates what our books called for on that date.

Q. What I am trying to get at is an explanation of these items contained in your books; is it not a fact that those two items are supposed to show all of the foreign coal on hand in San Francisco and in Oakland on the 1st day of April, 1906? A. Yes.

Q. That is correct, is it? A. That is correct.

Q. And the Western Fuel Company, to your knowledge, had no other foreign coal on hand in the State of California? A. No.

Q. Because the San Diego Depot, if there was any coal on hand at that time, there, was taken into consideration in fixing up the figures, or compiling the figures for the San Francisco office?

A. Yes. [2192]

X.

The Court erred in admitting in evidence, against and over the objection of the defendants herein named, United States Exhibit Number 24, being a statement or document entitled "Western Fuel Co., coal received at Oakland Depot, April 30, 1906, coal account"; said statement or document indicating the coal received at Oakland by the Western Fuel Company during the month of April, 1906.

The substance of the evidence thus admitted is more fully set out in the extract from the testimony of the witness Norcross quoted in Assignment XII below, which extract refers generally to United States Exhibits Numbers 24 to 42, inclusive, and which said exhibits are all documents of substantially the same general character and description.

To the ruling of the Court, admitting in evidence said United States Exhibit Number 24, the defendants then and there duly and regularly excepted.

XI.

The Court erred in admitting in evidence, against and over the objection of the defendants herein named, United States Exhibit Number 25, being a statement or document entitled "Western Fuel Co., coal received at San Francisco Depot, April 30, 1906, coal account"; said statement or document indicat-

ing the coal received at San Francisco by the Western Fuel Company during the month of April, 1906.

The substance of the evidence thus admitted is more fully set out in the extract from the testimony of the witness Norcross quoted in Assignment XII, next below, which extract refers generally to United States Exhibits Numbers 24 to 42, inclusive, which said Exhibits are all documents of [2193] substantially the same general character and description.

To the ruling of the Court, admitting in evidence said United States Exhibit Number 25, the defendants then and there duly and regularly excepted.

XII.

The Court erred in admitting in evidence, against and over the objection of the defendants herein named, United States Exhibits Numbers 26 to 93, inclusive, being two series of documents or monthly statements compiled by the Western Fuel Company for each and every month from and including the month of May, 1906, to and including the month of December, 1912, each monthly statement in the first series being entitled "Western Fuel Co., coal received at Oakland Depot (here date is inserted) coal account," and being of the same general character and description, *mutatis mutandis*, as United States Exhibit Number 24 (Assignment X, *supra*; and each monthly statement in the second series being entitled "Western Fuel Co., coal received at San Francisco Depot (here date is inserted) coal account," and being of the same general character and description, *mutatis mutandis*, as United States Exhibit Number

25 (Assignment XI *supra*).

The full substance of the testimony thus admitted in evidence is set out in the extract next hereinbelow quoted from the testimony of witness Norcross under direct examination by Mr. Roche, which said extract, while it relates specifically to the monthly statements for the year 1906, United States Exhibits 24 to 42, inclusive, is equally applicable, *mutatis mutandis*, to the corresponding statements for the years 1907 to 1912, inclusive, United States Exhibits Numbers 43 to 93, [2194] inclusive:

“Q. Each of these statements indicating coal received at Oakland during a given month does show all of the coal received at the Oakland depot for that given month. A. That is right.

Q. Including all foreign coal? A. Yes.

Q. And each of these sheets purporting to show coal received at San Francisco for each particular calendar month does show all of the coal received by the Western Fuel Company in San Francisco.

A. Yes.

Q. So that both of these sheets together do show all of the coal received by the Western Fuel Company in the State of California for each given calendar month. A. Yes.

Q. That is correct, is it? A. Yes.

Q. And these sheets cover from April 1, 1906 to December 31, 1906.

A. I did not look that over.

Q. Well, just look at them so that you can answer that question.

A. That is correct, April to December.

Q. Let me ask you one other question with reference to the imported coal so far as these weights are concerned: It is also true, is it not, Mr. Norcross, that so far as the foreign coals are concerned upon which the Western Fuel Company paid duty during the months indicated by those statements, that is, from and including the month of April, 1906, to and including the month of December, 1906, the weight of coal contained in these statements is the weight upon which the duties were paid; in other words, the ascertained weight; that is correct, is it?

A. That is correct. [2195]

“Q. And is not the invoice or bill of lading weight, excepting in those cases, if there were any such cases, in which the invoice or bill of lading weight agreed with the ascertained weight?

A. That shows the custom-house weight of the coal.

Mr. ROCHE.—I think we had probably better have these marked separately, Mr. Clerk. I will offer all of these statements at the one time, Mr. McCutchen, subject to your objection, of course, and it may be stipulated that the objection applies to each one.

Mr. McCUTCHEN.—Yes, and an exception.”

To the ruling of the Court admitting in evidence said United States Exhibits Numbers 26 to 93, inclusive, the defendants as hereinabove indicated duly and regularly excepted.

XIII.

The Court erred in overruling the objection interposed by the defendants to the following question

propounded to the witness Norcross on his direct examination:

“Q. For what price were you selling Australian coal at that time” (this question was asked after it had been elicited that the annual statement of the Western Fuel Company for the year 1909 contained the following item “By overrun Australian coal \$21875,” which alleged overrun reduced, by calculation of the witness upon the stand, into terms of weight, instead of money, was 2700 tons).

“Mr. McCUTCHEN.—I object to that as immaterial, irrelevant and incompetent, the selling price of coal has nothing to do with this conspiracy. [2196]

“Mr. ROCHE.—I don’t know whether your Honor desires to have the matter argued, or not.

The COURT.—The objection is overruled.

Mr. McCUTCHEN.—We note an exception.

A. What year was that?

Mr. ROCHE.—Q. That was 1909.

A. Either \$8.00 or \$9.00 a ton, I don’t remember which.

Q. That is, sold by you. A. Yes.

Q. That is, sold by you to the dealers, do you mean? A. Yes.”

To which above ruling the defendants, as above indicated, then and there duly and regularly excepted.

XIV.

The Court erred in overruling the objection interposed by the defendants herein named, and each of them, to the introduction in evidence against them, and each of them, of United States Exhibit Number 106, being the so-called dock diary or journal for the

year 1904, kept by the defendant Mills.

The substance of the evidence thus admitted is indicated in the following extract from the testimony in this cause, which extract has reference not only to said dock diary or journal for the year 1904 (United States Exhibit Number 106), but also has reference generally to the dock diaries or journals for the years 1905 to 1912, inclusive (United States Exhibits Numbers 107 to 114, inclusive—see Assignments XVI and XVII, below): [2197]

“Mr. McCUTCHEN.—If you propose to show, if you state that you intend to show that any of these defendants other than Mr. Mills ever saw these books, or heard of them, during any of the time covered by your indictment, we will make no objection to your preliminary offer of them.

Mr. ROCHE.—Counsel certainly understands that we desire to put these books in evidence as books of original entry for the purpose of showing the weight of the coal as it was discharged from the off-shore bunker, and the weight of the coal as determined by the Western Fuel Company at the time it was laden from the barges to the boats which were coaled with coal previously laden upon the barge; that is the purpose for which we intend to use this book and those books. Of course, we will simply have to withdraw this witness and put another witness on to prove the entries before we can put the book in evidence.” (“This witness,” namely, Norcross, having testified that he could not explain the entries in said books.)

* * * * *

“Mr. McCUTCHEN.—If your Honor please, with reference to the books which were called to the attention of the witness Norcross just before adjournment, and in order to facilitate the prosecution in laying the foundation for an offer of these books, we will admit that the entries in these books in the handwriting of the defendant Mills were made by him in the course of his employment with the Western Fuel Company.

Mr. ROCHE.—And that they were made upon the dates [2198] which they bear.

Mr. McCUTCHEN.—Yes, we will assume that to be true; yes, we will make that admission subject to correction.

Mr. ROCHE.—And will you also admit, Mr. McCutchen, that where the handwriting is not—

Mr. McCUTCHEN.—Pardon me for interrupting you I think I understand what you have in mind. Subject to correction hereafter, we will admit that where entries are made in the handwriting of any other person than Mr. Mills those entries were made by the person making them in the course of his employment with the Western Fuel Company.

Mr. ROCHE.—And upon the dates upon which they purport to have been made.

Mr. McCUTCHEN.—We don't know anything about that but we make that admission subject to correction.

Mr. ROCHE.—Then we offer in evidence at this time, may it please the Court, the diaries kept by the defendant Mills, the dock diaries kept by the defendant Mills, for the years 1905, 1906, 1907, 1908,

1909, 1910, 1911, and 1912.

Mr. McCUTCHEN.—Now, for the purpose of preserving a record—

Mr. ROCHE.—Just a minute, Mr. McCutchen; and also for the year 1904.

Mr. McCUTCHEN.—We object to these books upon the ground that the books and the entries in them as to all of the defendants, except possibly the defendant Mills, are hearsay and are not admissible, and that they are incompetent. [2199]

The COURT.—That may or may not be true at the present time. The objection however will be overruled and the books will be admitted.

Mr. McCUTCHEN.—We take an exception to that ruling.”

To which ruling of the Court admitting in evidence, against said defendants, and each of them, said United States Exhibit Number 106, the defendants as above indicated, then and there duly and regularly excepted.

XV.

The Court erred in overruling the objection interposed on behalf of defendants, James B. Smith and E. H. Mayer, to the introduction in evidence against them, and each of them, of United States Exhibit Number 106, being as aforesaid (see Assignment XIV) the dock diary or journal for the year 1904 kept by the defendant Mills.

The substance of the evidence thus admitted is indicated by the extract from the testimony quoted in the next preceding Assignment (see Assignment XIV) and by the following extract from the testi-

mony in this cause, which following extract relates to the objection on behalf of all the defendants, except the defendant Mills, to the admission of said United States Exhibit Number 106 (together also with United States Exhibits Numbers 107 to 114, inclusive, being as aforesaid in Assignment XIV, the dock diaries or journals for the years 1905 to 1912, inclusive—see also Assignments XVI and XVII).
[2200]

“Mr. McCUTCHEN.—* * * And now we make the same objection” (referring to the objection noted in Assignment XIV, *supra*) “on behalf of all the defendants excepting the defendant Mills.

The COURT.—All the effect that this matter might have upon the other defendants will depend a great deal on whether or not a conspiracy is shown.

Mr. McCUTCHEN.—Yes.

Mr. ROCHE.—Of course, that is correct, may it please the Court, that if we do not show a conspiracy among these defendants, that as to such defendant against whom we do not show a conspiracy the Government would not have made out a case. But the primary purpose for which the books are being offered at this time is for the purpose of showing that weight of the coal at the time the coal was laden on the barge, and likewise to show the weight of the coal at the time the coal was taken from the barge and laden on to the boats.

The COURT.—The objection is overruled.

Mr. McCUTCHEN.—And your Honor overrules the second objection also.” (Referring to the objection in this Assignment above stated “on behalf of

all the defendants except the defendant Mills.”)

The COURT.—Yes.

Mr. McCUTCHEN.—We take an exception.”

To which ruling of the Court admitting in evidence against defendants, James B. Smith and E. H. Mayer, said United States Exhibit Number 106, said defendants as last above indicated then and there duly and regularly excepted. [2201]

XVI.

The Court erred in overruling the objection interposed by the defendants herein named, and each of them, to the introduction in evidence against them, and each of them, of United States Exhibits Numbers 107 to 114, inclusive, being the so-called dock diaries or journals for the years 1905 to 1912, inclusive, kept by the defendant Mills.

Said Exhibits are not herein made the subject of separate and individual assignment, for the reason that each and all of them are of substantially the same general character and description and were introduced in evidence contemporaneously by counsel for the plaintiff herein.

The substance of the evidence thus admitted is indicated by the extract, from the testimony herein, quoted in Assignment XIV, *supra*, which said extract as there explained refers generally to the dock diaries or journals for the years 1904 to 1912, inclusive, being United States Exhibits Numbers 106 to 114, inclusive.

XVII.

The Court erred in overruling the objection interposed on behalf of defendants, James B. Smith and

E. H. Mayer, to the introduction in evidence against them, and each of them, of United States Exhibits Numbers 107 to 114, inclusive, being the so-called dock diaries or journals for the years 1905 to 1912, inclusive, kept by the defendant Mills.

Said Exhibits are not herein made the subject of separate and individual assignment, for the reason that each and all of them are substantially the same general character and description and were introduced in evidence contemporaneously by counsel [2202] for the plaintiff herein.

The substance of the evidence thus admitted is indicated by the extracts, from the testimony herein, quoted in Assignments XIV and XV, *supra*, respectively, which said extracts, as in said assignments explained, refer generally to the dock diaries or journals for the years 1904 to 1912, inclusive, being United States Exhibits Numbers 106 to 114, inclusive, and the latter of which extracts (quoted in Assignment XV) relates to the objection to the admission of said Exhibits urged on behalf of all the defendants except the defendant Mills.

XVIII.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness Norcross on his cross-examination:

“Q. Do you recall whether at the time that you purchased their coal they had a considerable stock on hand?”

(The witness immediately prior to the propounding of said question had testified that he first heard

about overages or overruns in the coal business in 1903, and in connection with the purchase of coal by the Western Fuel Company from the Wilson Company and the Howard Company, the latter being the vendor referred to in the above quoted question.)

The substance of the answer which it was expected the witness would give is indicated by the following quotation:

“Mr. ROCHE.—One moment, may it please the Court. That is objected to upon the ground it is not proper cross-examination and as immaterial.

Mr. MOORE.—The purpose of it was this,—he was asked, Mr. Norcross was, when he first heard about overruns. Now, I propose to show upon cross-examination, if I might be permitted [2203] to do so, that the first overrun that he heard about was not in connection with the business of the Western Fuel Company at all, but at the time they purchased certain coal, buying it upon book weights subject to adjustment on outturn weights; when it was actually weighed, it came to his knowledge in that case. It is merely cross-examination as to when he first heard about overruns. I think that it is admissible upon cross-examination on this theory too, your Honor. It seems to me that this witness has been examined as if these overruns were a strange and novel thing and peculiar only to the business transacted by the Western Fuel Company and that some veil of secrecy seems to surround them, that as little was said concerning them as possible, as if they were treated as something strange and unusual; and it is to negative that idea or inference, if it is one which is claimed

can be drawn legitimately from the direct examination. I would like to ask of this witness if he did not hear of overruns in connection with the business of other companies as well.

Mr. ROCHE.—The direct examination of this witness in so far as it related to overruns related exclusively to the business done by the Western Fuel Company. We are not at this time trying any frauds committed by any other coal concern or companies in the State of California. If it becomes necessary to do so, of course, we will do that at the proper time. But counsel is now under the guise of cross-examination of this witness trying to ascertain from him what he heard concerning the accounts [2204] of other coal concerns doing business in San Francisco, or elsewhere.

Mr. MOORE.—There has been, if your Honor please, an implication that the occurrence of an overrun constitutes fraud. It is to dissipate that very idea that I desire to cross-examine this witness not only with respect to these other two dealers. That I can do through the medium of cross-examination. But if an overrun constitutes fraud I can say now that every man in the coal business in the United States is also guilty of fraud from the mere fact and circumstance of an overrun. That is just what we object to in this case. If a man has 1.9 overrun or 2.3 overrun or 2.9 overrun, where he has handled two millions of tons of coal in large blocks and quantities, why, by whatever system of weighing, we claim that that does not necessarily and of itself show fraud; considering the proportion of the overrun

and the bulk of the commodity handled, it is absolutely inconsistent with any such idea. Now, returning to the matter of cross-examination of this witness, if your Honor please, we submit that counsel himself in his remarks has just emphasized it, that they are trying to make something out of this overrun here, without telling the jury what the overrun amounts to or apparently being willing to disclose that information, and asking this witness when he first heard of overrun; and in that connection and upon cross-examination we desire to elicit the fact as to when indeed he did first hear of an overrun.

The COURT.—The overrun as disclosed by these reports and books. [2205]

Mr. ROCHE.—No.

Mr. STANLEY MOORE.—No, he was asked the question—

The COURT.—The objection will be sustained.

Mr. MOORE.—Exception.”

To which ruling of the Court the defendants, as hereinabove indicated, then and there duly and regularly excepted.

XIX.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness Norcross on his cross-examination:

“Q. Mr. Norcross, if the company’s business was considered right back to its beginning, what do I understand you to say would be the average of dividends or income that has been received from it?

Mr. ROCHE.—Now, just one moment, may it

please the Court, that question is objected to upon the ground that it directs the witness' attention to a date anterior to the first day of January, 1904."

To which ruling of the Court, the defendants then and there duly and regularly excepted.

XX.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness Norcross on his cross-examination immediately after said witness had testified that certain annual statements of the Western Fuel Company, in which mention of overruns appears were intended for the persual of all of the stockholders of said Company, as well as of the directors thereof: [2206]

"Q. Did you see anything strange or to excite suspicion by reason of it?" referring to the so-called "overruns" experienced by the Western Fuel Company.

To which ruling of the Court the defendants then and there duly and regularly excepted.

XXI.

The Court erred in overruling the objection interposed by the defendants to the following question propounded to the witness Moynihan on his further redirect examination:

"Mr. ROCHE.—Q. 10 lbs. over and under 5 lbs.; so that, in your judgment as an experienced weigher, the actual weight of coal would be within 10 lbs. of the weight taken upon a rising beam."

The testimony on recross and further redirect examination immediately preceding the above quoted

question was as follows:

“Mr. DUNNE.—Q. Do you always give yourself sufficient time to make exact weights when you are weighing coal?

A. What do you mean by exact weights?

Q. Well, I mean just exactly what the word ‘exact’ means; I mean precisely correct to the lb.

A. We follow the custom in vogue of taking the weight with a rising beam; we do not wait for it to stop.

Q. Will you just answer my question, understanding what the word ‘exact’ means; do you always give yourself sufficient time in weighing coal to get precisely exact weights? Now, you can answer that yes or no, I think.

A. Well, I will answer it by stating that we take it on the rising beam, the beam is never steady as a rule when we take the weights; now whether that is exact, or [2207] not—I don’t really know to what point you are getting.

Q. As an experienced weigher do you mean to say that a weight registered upon a rising beam is a precisely exact weight to the lb.?

A. We never weigh as close as a lb. Our weights are never recorded less than 10 lbs. That is, on a 10-lb. decimal.

Q. Why don’t you wait in that process for precisely exact weights?

A. Well, we are following a custom that is handed down to us under orders to weigh within 10 lbs.

Q. Well, in plain English, Mr. Moynihan, if you were to wait for precisely exact weights in weighing

coal when you were unloading ships, you could not do business, could you—the world has to move on, has it not?

Mr. McCUTCHEN.—There is no answer to that.

Mr. DUNNE.—I don't think it requires an answer.

Further Redirect Examination.

Mr. ROCHE.—Q. Mr. Dunne has asked you how close to an absolutely accurate weight you weigh the coal at the time the coal is weighed: I will ask you this question, in your judgment as a weigher, having 18 years experience, how close to the actual weight of the coal is the coal weighed when it is weighed by you upon a rising beam?

Mr. McCUTCHEN.—The witness said on cross-examination, may it please the Court, that he could not tell how exact it was.

Mr. ROCHE.—But he may be able to give that testimony, may it please the Court, although he does not weigh the coal other than upon a rising beam, for this reason, if your Honor will permit me to argue the matter— [2208]

The COURT.—There is no occasion to argue it; if I get a chance to rule I will overrule the objection. Answer the question.

A. We try to get it within the decimal of 10 lbs. over and under 5 lbs."

The question first above quoted which immediately follows the last answer was objected to by the defendants "as calling for the conclusion of the witness, and as not necessarily following from his other testimony."

To the overruling of this objection by the Court the defendants then and there duly and regularly excepted.

XXII.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness Dougherty, (Chief United States Custom-house Weigher) on his cross-examination:

“Q. Is it not a fact that most of the articles are not weighed on a rising beam?”

The reporter's transcript immediately following the question quoted reads thus:

“Mr. ROCHE.—That is objected to, may it please the Court as calling for the conclusion of the witness, and upon the further ground that the regulation upon which Counsel relies has already been read in evidence.

Mr. STANLEY MOORE.—It goes to his knowledge and his experience as a weigher.”

To which ruling of the Court, the defendants then and there duly and regularly excepted.

XXIII.

The Court erred in sustaining the objection interposed [2209] by the plaintiff to the following question propounded to the witness Tidwell on his cross-examination:

“Q. Now, I ask you what other matters have you in mind and which you use in that assumption other than these three instances of the ‘Germanicus’ and the ‘Dumbarton’ ”?

The context is indicated by the following testimony

immediately preceding the question quoted:

“Mr. McCUTCHEN.—Q. Your calculation was made on that basis, was it not? A. Yes, sir.

Q. That the coal which passed over the scales and went into the offshore bunkers was correctly weighed? A. Yes, sir.

Q. Does not that assumption include all coal that passed over the scales?

A. Why, not in every instance, no.

Q. Well, aside from these three or instances that have been spoken of here, does not that assumption include every ton and every lb. of coal that passed over the scales?

A. No sir, for the reason that we have some information as to crooked weighing.

Q. Mr. Roche has called attention to the discharge of several cargoes, where there was a shortage; you have those in mind, have you not?

A. Yes, I have those in mind.

Q. The ‘Dumbarton’ and the ‘Germanicus’?

A. Yes, as well as other matters.

Q. Where the settlement was made with the Government on the invoice weight, and not on the custom-house weight.

A. That as well as other matters.

(Then follows immediately the question first above quoted to which plaintiff objected.) [2210]

To which ruling of the Court sustaining the objection of the plaintiff, defendants then and there duly and regularly excepted.

XXIV.

The Court erred in sustaining the objection inter-

posed by the attorneys for the plaintiff to the following question propounded to the witness Tidwell on his cross-examination:

“Mr. STANLEY MOORE.—Q. Well, do you recall anything further having been said in that connection, Mr. Tidwell, other than what you have already testified to?”

To which ruling of the Court the defendants then and there duly and regularly excepted.

The information desired to be elicited by the defendants in propounding the above question is indicated by the following immediately preceding testimony:

“Mr. STANLEY MOORE.—If your Honor please, we would like to ask the witness just a few questions in order to lay a definite record in regard to a certain matter as to which he has been questioned.”

(The “certain matter” referred to was the alleged appearance of certain newspaper articles in the public press of San Francisco after Mr. Tidwell’s examination of the books and papers of the Western Fuel Company.)

“Q. Mr. Tidwell, do you recollect upon what date it was that the company turned over the books to yourself and to your assistant back in February of this year?

A. No, I do not recall the exact date, but I do recall, or at least I think I am correct in this as to [2211] “the exact date, that the company was subpoenaed to appear before the Grand Jury to produce its records on the 7th of February. That is my best

remembrances of the date at the present time, and that soon after that, a few days afterwards, the records were turned over, that is, certain records were turned over.

Q. Had any demand been made upon the company previous to the service of this subpoena?

A. No, sir.

Q. Do you remember whether after the subpoena was served upon the company, and within a day or so, Mr. Norcross or Mr. Olney or Mr. Howard informed you, or the members of the Grand Jury, or the United States District Attorney, that you were welcome to look at the books?

Mr. ROCHE.—That question is objected to as not proper cross-examination.

Mr. STANLEY MOORE.—It goes to fix a date, your Honor. There has been some suggestion here in regard to the books during the direct examination, and the suggestion it seems to me has been thrown out by the witness during the cross-examination that there was nothing voluntary about the original production of these books. In view of that I simply want to develop the fact so that the witness could judge as to the correctness of that statement. It goes to fix the date with reference to this other matter that I desire to lay the foundation for.

Mr. ROCHE.—Counsel can by a direct question put to the witness, bring out that matter. He can put a direct question to the witness for the purpose of ascertaining or having him fix the precise date upon which the particular transaction which he has in mind occurred; but he has no [2212] right for

that purpose to attempt to elicit from the witness conversations which took place between himself and various other parties. The only purpose for which this examination was permitted this morning, or for which it was pursued, was for the purpose of showing animus, or rather, it was so claimed because the witness at a certain time made a certain request of one of the Government officials with reference to certain Government documents. That matter was fully developed this morning and was fully investigated as the result of the questions put to the witness. This should not be permitted now under the guise of cross-examination.

Mr. STANLEY MOORE.—I think I would have the right to go into the question of the original production of the books at any event in view of some of the assertions and statements made by the witness during the course of his examination, and by Mr. Roche as well during the course of the objections, which objections have been interlarded with statements as to the facts concerning these matters. I simply wanted to develop the fact from the witness in regard to the production of the books. And incidentally I want to fix also a certain date with respect to the appearance of certain newspaper articles.

The COURT.—The objection is overruled.

A. The date which I will fix is February 7th—and I think that is correct, on that date Mr. Norcross and the defendant Howard appeared in answer to a subpoena and brought two or three records; one was a book kept by the defendant Mills; another was a discharge sheet—those yellow discharge sheets, and an-

other was a large book which is also in evidence [2213] “here, I don’t know how to describe it exactly. At that time both Mr. Howard and Mr. Norcross, as I remember it, stated that we could have their books to go into whenever we saw proper. A few days later, probably the next day, I don’t know exactly, Mr. Norcross and I had a conversation and certain records were then delivered.

Mr. STANLEY MOORE.—Q. Well, is it not a fact that they also stated to you at that time that you could go down there, together with any persons whom you might designate to assist you in the examination, and examine the books and records of the company, down in the office of the Western Fuel Company?

Mr. ROCHE.—That is objected to, if your Honor please, upon the same grounds.

The COURT.—That does not fix any date.”

XXV.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness Tidwell on his cross-examination:

“Q. Then, Mr. Tidwell, do you recall an article appearing in the ‘San Francisco Bulletin’ the day after you commenced this examination of the books and papers of the Western Fuel Company concerning these books and papers?

To which ruling of the Court the defendants then and there duly and regularly excepted. [2214]

XXVI.

The Court erred in sustaining the objection interposed by the plaintiff to the following question pro-

pounded to the witness David G. Powers on his cross-examination:

“Q. The question is, are you positive that you did not?

To which ruling of the Court the defendants then and there duly and regularly excepted.

The context is indicated by the following immediately preceding testimony:

“Q. I will ask you this question, Mr. Powers, have you not yourself stated that you expected to get a very large amount of money out of this case, and when asked how you expected to get that, have you not stated that there was a sugar case back there in Philadelphia, and the man who gave the information there got a very large amount of money, which was a percentage of the fine? A. No, sir.

Q. Do you testify positively, Mr. Powers, that you have not made that statement here in the City and County of San Francisco?

A. I am testifying to everything I can remember. I testify that I do not remember making any statements like that.

Q. The question is, whether or not you testify to that positively or not, or merely is it your answer that you don't remember making any statement like that? As I understood your answer first, it was that you [2215] “positively answered ‘No,’ you had not made any such statement. Is that correct, or is it that you don't remember?

A. I don't remember ever making any such statements.

Q. That is the very point of the question that I am

attempting to address you. Do you undertake to say here positively and as a matter of fact, that no such statement has ever been made by you?

A. Yes, I can say to that, according to my own mind, yes.

Q. When you say 'according to your own mind,' you mean according to your recollection, or is your mind clear on that, and are you able to positively deny that you ever have done so?

A. I am testifying that as far as I can remember anything I can remember of—I am testifying positively to what I can remember.

Q. I have to recur to the question again: I want to ask you now again, can't you recollect as to whether, in point of fact, you have made any such statement as that? A. I cannot recollect.

Q. Do you undertake to testify positively before this Court and jury that you have made no such statement as that?

A. Yes, according to my mind; I cannot remember ever making any such statement." [2216]

XXVII.

The Court erred in overruling the objection interposed by the defendants to the following question propounded to the witness Edward Powers on his direct examination:

"Q. Have you been requested upon various occasions by the attorneys representing the Government to advise them or one of them of the facts within your knowledge relating to this case?

Mr. McCUTCHEN.—I object to that as irrelevant and immaterial, if your Honor please."

To which ruling of the Court the defendants then and there duly and regularly excepted.

XXVIII.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness Edward Powers on his cross-examination:

“Q. So far as any discrepancy in the tubs is concerned, Mr. Powers, is it or is it not your opinion that it is due to that particular system of weighing that the Government itself through the custom-house follows, and not to any fault so far as the Western Fuel Company is concerned, or any of its employees”?

To which ruling of the Court the defendants then and there duly and regularly excepted.

XXIX.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded [2217] to the witness Edward Powers on his cross-examination:

“Mr. STANLEY MOORE.—“Is it not a fact then that you would attribute it” (the examining attorney meaning ‘it’ as shown by his immediately preceding question, the fact * * * if it be a fact, that the tubs that are weighed have some more coal in them than the tubs which are not weighed?) “to that system of weighing down there”?

To which ruling of the Court the defendants then and there duly and regularly excepted?

XXX.

The Court erred in sustaining the objection interposed by the plaintiff to the underlined (*italicized in*

printed transcript) question propounded in the below quoted testimony to the witness John W. Smith, a United States Customs Inspector, on his cross-examination:

“Q. Do you know whether that” (referring to the “Americano” discharged at the Folsom Street Dock in January, 1913) “was a foreign or an American ship?”

A. I believe it is a foreign ship.

Q. *Do you know whether she was represented at that operation by her Captain, or by a clerk of the ship?*

Mr. ROCHE.—That question is objected to as not being proper cross-examination.

Mr. McCUTCHEN.—He has told about the operation, your Honor, and about what was done. If he does not know it, I don’t care to press it.

Mr. ROCHE.—Of course, in the very nature of things he could not have known it, but irrespective of that, may it please the Court, it is not proper cross-examination.”

To which ruling of the Court the defendants then and there duly and regularly excepted. [2218]

XXXI.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness John W. Smith on his cross-examination:

Mr. McCUTCHEN.—“Q. Were you always accompanied by some one else on the occasion of those visits”?

(Referring to the visits of the witness who was a

United States Customs Inspector to the bunkers of the Western Fuel Company.)

To which ruling of the Court the defendants then and there duly and regularly excepted.

XXXII.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded on cross-examination of the witness Samuel Griffin, formerly a motorman in the employ of the Western Fuel Company on cars carrying coal on the docks from steamer to scales:

“Q. What do you think would happen to those scales if you ran under that weight-house and onto the scales with your cars piled so high with coal that you collided with those beams?”

Mr. ROCHE.—That is objected to as calling for the conclusion of the witness.”

The answer which the examining attorney expected to elicit from said overruled question is indicated by the following question asked of the witness immediately before:[2219]

“Mr. STANLEY MOORE.—Q. Have you ever heard anybody say that if those cars were overloaded and they got to grinding against those beams, that it would break those scales”?

To which ruling of the Court the defendants then and there duly and regularly excepted.

XXXIII.

The Court erred in overruling the objection interposed by the defendants to the following question propounded to the witness Arnold Freund on his direct examination:

“How much time, elapsed, if you can recall”?

To which ruling of the Court the defendants then and there duly and regularly excepted.

The context is indicated by the following quotation from the testimony of said witness in which the question objected to and quoted above appears and is underlined (italicized in printed transcript):

“Q. Do you recall an occasion when you weighed a barge out short? A. I do.

Q. When was that?

A. I have forgotten the date of it; sometime in 1908, I believe.

Q. Were you watching the tubs very closely on that occasion? A. I was.

Q. Had there been some complaint made about the weights of coal at that time? A. By whom?

Mr. STANLEY MOORE.—Just a moment. We object to that, your Honor, as irrelevant and incompetent.

The COURT.—The objection is sustained.
[2220]

Mr. ROCHE.—I will withdraw that.

Q. You say you were watching the tubs very closely? A. Yes, sir.

Q. What, if anything, occurred after you had completed weighing out that barge; when did you next get an assignment to weigh drawback coal?

A. Sometime after.

Q. *How much time elapsed, if you can recall.*

Mr. McCUTCHEN.—We object to that. What is the inference to be drawn from that?

Mr. ROCHE.—We have a right, may it please the

Court, in a case such as this, to show what the facts are, to show what the situation was upon this particular occasion and to ascertain when he was next called upon to act as an assistant weigher in weighing drawback coal.

Mr. McCUTCHEN.—It is intended that an inference of some improper conduct on our part shall be drawn from that, and I submit that it is unfair and that no such inference is properly deducible.

The COURT.—The objection is overruled.

Mr. McCUTCHEN.—We note an exception.

A. I don't know, but some few months as far as I can recollect. It was quite a while; I don't recollect the date of it but I know I didn't get down there for some time after."

XXXIV.

The Court erred in overruling the objection interposed by the defendants to the introduction in evidence, under the circumstances indicated in the quotation below, [2221] of extracts from the minutes of the monthly meetings of the board of directors of the Western Fuel Company of the following named dates:

September 10, 1908, September 30, 1908, November 4, 1908, December 7, 1908, February 18, 1909 (including for this date that portion of the minutes showing the submission of the annual statement already heretofore introduced in evidence), February 23, 1909, March 10, 1909, March 20, 1909, April 29, 1909, June 7, 1909, July 14, 1909, August 3, 1909, September 27, 1909, December 9, 1909, December 30, 1909, February 1, 1910, May 18, 1910, June 28, 1910,

August 25, 1910, September 22, 1910, October 27, 1910, November 25, 1910, December 21, 1910, January 26, 1911, March 24, 1911, July 1, 1911, July 22, 1911, August 29, 1911, September 28, 1911, November 29, 1911, December 26, 1911.

(Said extracts were introduced in evidence contemporaneously, and are, therefore, not made the subject of separate and individual Assignments.)

Mr. ROCHE.—Your Honor will recall that a few days ago it was stipulated that certain portions of the minutes should be deemed to have been read in evidence. I think that before we close our case, I ought to direct counsel's attention to the particular dates upon which the meetings were held, part of which minutes we desire to have considered read, so as to perfect the record here.

Mr. McCUTCHEN.—If you would limit the purpose for which you want those minutes in, Mr. Roche, so that we would not be taken by surprise by finding something in them to which our attention has not been called, we might consent that the entire books go in. [2222]

“Mr. ROCHE.—We don't desire the entire minute books to go in, because it would simply encumber the record. It will only take a moment for me to read an extract taken from one of the meetings, and we can assume that only that portion of the proceedings of the other minutes is offered in evidence.

“San Francisco, September 10, 1908.

“Present: John L. Howard, James B. Smith, Joseph L. Schmidt, Robert Bruce and Sidney V. Smith. Statements with balance sheet showing the

results of the company's business to July 31, 1908, were submitted, and on motion of Bruce, seconded by Mr. Sidney V. Smith were accepted and ordered placed on file."

That is the only extract from those minutes, may it please the Court, of that date, that we desire to offer in evidence.

I will now direct the reporter's attention to the dates upon which these subsequent meetings were held, and only those portions of the minutes showing the directors present, and those portions of the minutes relating to the submission of statements and the action which was taken by the board of directors on those statements are offered in evidence.

Mr. McCUTCHEN.—Just a moment. Mr. Roche, the situation is not complete simply upon the offer of that portion of the minutes. You have not offered any of these balance sheets. They are here; they are here at your disposal, but you have not offered them up to this time. It does not seem to us, if your Honor please, that it is proper or that it is fair to these defendants, to offer these resolutions without offering the statements to which the resolutions refer. Of themselves, the resolutions do [2223] "not explain anything. If counsel is to claim hereafter, as I have no doubt he will claim, that these resolutions refer to something else, he ought to develop to what they refer. If he is going to offer the resolutions for the purpose of showing that some statement was read to the directors, or was considered by them, he ought to offer the statements that were read at the same time.

Mr. ROCHE.—The answer to that is this: We do not consider ourselves bound by the testimony given by the witness, Norcross, as to what did, in fact, come up for consideration before the directors. Now, we have offered in evidence monthly statements showing the total quantity of business in tonnage, some of these statements showing tonnage, and other statements showing dollars and cents, which were rendered from time to time in connection with the business of the company. Now, we say, may it please the Court, that it is for the jury to determine, from the language used in these minutes, and from the language in which the proceedings of the board of directors is couched—I say it is for the jury to determine to what statements the language refers, and whether any of the statements which have heretofore been introduced in evidence are statements referred to by the minutes of the meetings of the board of directors.

Mr. McCUTCHEN.—We have the testimony of Mr. Norcross—I don't claim that the prosecution is bound by Mr. Norcross' testimony, but we have the testimony of Mr. Norcross, which up to this stage has not been contradicted, that the statements which have been offered in evidence are not the statements referred to in these minutes. The showing up to this time is that those statements are not before the [2224] Court. As I say, none of us have any objection to the offer of these minutes, but if the resolution to which counsel has just called attention is to be offered and to be considered by the jury, then counsel ought to do one of two things, he ought either

to offer the financial statements, of which he has control and which are in his possession, or he ought to offer proof that the statements which he has already put in evidence are the statements referred to in these resolutions.

Mr. ROCHE.—It seems to me, may it please the Court, that this is a conclusive answer to the contention of Mr. McCutchen; that we—

The COURT.—How is this matter before the Court? Is there an objection to this resolution?

Mr. ROCHE.—It really is not before the Court at this time.

Mr. McCUTCHEN.—Counsel was offering that, and I was only suggesting that to get the whole matter before the Court these statements should be offered, and that the record will be incomplete, if the offer of the resolution, itself, is unaccompanied by those statements.

Mr. ROCHE.—Is there any objection to these minutes going in?

Mr. McCUTCHEN.—I don't think they are material, and I don't think they are complete.

Mr. ROCHE.—We submit that objection.

Mr. DUNNE.—We put the objection on the ground that the offer is without foundation.

The COURT.—The objection is overruled."

To which ruling of the Court admitting in evidence said extracts from said minutes, failing (a) the offer of proof of identification of statements heretofore introduced in evidence or, in the alternative, (b) the introduction of the financial statements of the Western Fuel Company (see the quotation above), the

defendants then and there duly and regularly excepted. [2225]

XXXV.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness Bud Hopkins, time-keeper for the Western Fuel Company, on his cross-examination:

“Q. Is it or is it not the fact that all along the waterfront when mercantile concerns wanted to get freight off, or wanted to carry the operations past the regular hours of the custom-house employees, that that overtime was paid?”

To which ruling of the Court the defendants then and there duly and regularly excepted.

XXXVI.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness Costello on his cross-examination:

“Q. How many of these invoices or consumption entries would be used up in the discharge of that cargo, if there had been attempted to be made an affidavit and papers concerning each one of them claiming the coal, and the vessels, if that could be done, which had been laden into the barge, and which went out of the barge?”

To which ruling of the Court the defendants then and there duly and regularly excepted.

The circumstances under which the question was asked were as follows:

The said witness Costello had been placed on the

stand to testify under direct examination from the Mills dock diaries or journals concerning the date on which certain imported [2226] coal had been brought into the port of San Francisco on the S. S. "Tellus," and the amount thereof, and as to the source of certain coal on which drawback was subsequently claimed by the Western Fuel Company, which coal was subsequently claimed by the Western Fuel Company, which coal was laden for fuel purposes on the steamer "City of Para." If the witness Costello correctly explained the entries in said Mills dock diaries or journals his testimony showed first, that more coal was laden on the "City of Para" than went into the barge from which she was loaded; and, secondly, that at least 60 tons of coal that went into the said "City of Para" could not have come from the S. S. "Tellus" because said 60 tons were laden on the former vessel before the latter berthed in San Francisco.

Counsel for the plaintiff then read in evidence the affidavit of defendant, James B. Smith, purporting to certify that the coal which was laden upon the "City of Para," and on which drawback was subsequently claimed, came from the "Tellus."

The following testimony immediately preceding and leading up to the question first above quoted, which was overruled, is given herein as showing the context of that question:

Mr. STANLEY MOORE.—Q. Mr. Costello, as a matter of fact, according to the Mills books, there went into that particular barge which discharged among other vessels, into the "City of Para," coal

that came from a number of different vessels, coal that had originally come into this port laden upon a number of different ships; is not that correct?

A. Yes, two or three, I think, two or three different vessels.

Q. And did not there also come into that particular [2227] “barge coal from bunkers as to which there was no designation as to what ship it had come into the port on? A. Yes, sir.

Q. And perhaps there may have been coal that came into the barge from the yards, although that might not be true as to this particular instance, but that does occur with respect to the loading of these barges, according to those books, does it not?

A. Yes, sir, it does.

Q. Is it or is it not a fact that all of that coal is imported coal, whether it came in on one ship or another, as to which when loaded into an American bottom, the owner of that bottom, who pays for that coal, is entitled to a drawback.

Mr. ROCHE.—One minute: We object to the question as calling for the conclusion of the witness. It asks the witness to pass on the regulations enacted by the United States Government, and, furthermore, it is not proper cross-examination.

The COURT.—The objection is sustained. The books show, and it will probably be taken as a fact, so far as the Court can determine it, that most of the coal discharged from the offshore bunkers was imported coal.

Mr. ROCHE.—Yes, your Honor, all of it, in fact, I think.

The COURT.—And it appears that the coal that was laden into the “Comanche” came from different places, among others, the offshore bunker. I assume that would be establishing, at least indirectly, that the coal was imported coal.

Mr. ROCHE.—Yes, your Honor.

The COURT.—I don’t understand that there is any claim on the part of the Government in this case that they were not entitled to drawback on this particular coal, the claim being that more drawback was claimed than they were entitled to, [2228] and that all of it did not come in on the steamship “Tellus.”

Mr. STANLEY MOORE.—That is not the purpose of this particular evidence, your Honor. In that view, it would not make any difference what vessel it was, so far as that particular contention is concerned. The witness has been examined on that but has not stated—and we don’t know now what proportion of overage he claims existed with respect to these barges. I can get at the matter this way, however.

XXXVII.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness Costello on his cross-examination in which question the witness was asked:

“Q. Have you given the matter any consideration with respect to, say the affidavits which were made by the officials of the Pacific Coast Coal Company with respect to drawback on imported coal in this port?”

To which ruling of the Court the defendants then

and there duly and regularly excepted. [2229]

XXXVIII.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness Tietjen upon his direct examination:

“Q. And it was one of those things which you would naturally expect, would you, in the course of the business?” (referring to the lowering of the scales down upon the catch block beneath by the pulling or sinking of the supporting nut into the soft wood, to which the witness had just testified. The immediately preceding question and answer were: “Was there any indication that that bolt or that scale had been tampered with? A. Not that I could see or know.” (The scales referred to were those at the Folsom Street dock or bunkers on which incoming coal imported by the Western Fuel Company was weighed for customs duties.)

To which ruling of the Court the defendants then and there duly and regularly excepted.

XXXIX.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness Tietjen on his redirect examination. The question refers to certain experiments made by the witness on the scales hereinbefore referred to on the Folsom Street docks about three weeks before his testimony was given: [2230]

“Will you state whether or not you were requested to go down and make these weights in such manner

as the custom-house men were accustomed to making them?

Mr. ROCHE.—We object to that as immaterial and as not redirect examination.

Mr. KNIGHT.—It is redirect examination on the cross-examination and on the questions put to the witness as to how he went down there to make the weights.”

To which ruling of the Court the defendants then and there duly and regularly excepted.

XL.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the Witness Desmond on his redirect examination. The question relates to the two beams that cross the tracks at Folsom Street Bunkers in front of the scales-house:

“Q. Is it or is it not the fact that when this car passed under that first beam there it would give him an idea, and, when he was bringing that car to a stop, as to what the clearness would be in regard to passing over the scale before going under the second beam?

To which ruling of the Court the defendants then and there duly and regularly excepted.

XLI.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the Witness Parr upon his direct examination:

“Are there other people besides yourself, for [2231] instance, other universities or government

agencies, making a study of the properties?" (Meaning the properties of coal.)

To which ruling of the Court the defendants then and there duly and regularly excepted.

The information desired to be elicited by this question is indicated by the following answer, which was stricken out on motion of the plaintiff, and by the following extract from the transcript:

"A. There are.

Mr. ROCHE.—That question "(referring to the question first above quoted)" is objected to on the ground, may it please the court, that it is immaterial; it certainly does not tend to throw any light upon the qualifications of the witness upon the stand.

Mr. OLNEY.—It is a preliminary question, and it has a bearing upon the question of information which the defendants in this case might have in regard to inferences to be drawn from an overage.

Mr. ROCHE.—But the answer to that is, may it please the Court, of course that the defendants in this case, who are acting in good faith, as they apparently claim they were, would have a right to testify on direct examination to what their information was upon these subjects.

The COURT.—The objection will be sustained. The fact that they might have obtained information, does not raise any presumption of innocence.

Mr. OLNEY.—I think, if the Court please, if as a matter of general investigation, and a matter of general information in the community, there is a presumption [2232] "that they were informed in re-

gard to these matters, it would not make any difference; it is a matter of general information and investigation.

The COURT.—What do you mean by general investigation? If it is so general that everybody should know it, then there is no occasion for him to testify at all on that subject.

Mr. OLNEY.—If your Honor please, everybody is not a coal man; I am holding this down, now, to people engaged in the coal business; or, at any rate, to people who are making a study of the subject.

The COURT.—Let him testify as to what he knows. If you have any other witnesses to testify to what they know, you can call on them. The objection will be sustained. [2233]

XLII.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to witness Parr upon his direct examination:

“Q. Is there any literature on this subject; that is, have the results of this study into the characteristics of coal in this respect as to changes in weight been put in published form?”

To which ruling of the Court the defendants then and there duly and regularly excepted.

XLIII.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to witness Parr upon his direct-examination:

“Q.—I am going to ask you, Professor Parr, if

these specifications in the Government contracts for the purchase of coal contain any specifications as to moisture contents?"

To which ruling of the Court the defendants then and there duly and regularly excepted.

XLIV.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness Parr upon his direct examination:

"Mr. OLNEY.—Q. Do you know of your own personal knowledge what these Government contracts call for by way of specifications as to moisture content?"

To which ruling of the Court the defendants then there duly and regularly excepted. [2234]

XLV.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness Parr upon his direct examination:

"Q. What is the practice pursued by large purchasers of coal in the East with reference to the purchase of coal and providing as to moisture content?"

To which ruling of the Court the defendants then and there duly and regularly excepted.

XLVI.

The Court erred in sustaining the objection interposed to the third question appearing underlined (italicized in printed transcript) in the following extract from the testimony on direct examination of

the witness Parr:

The witness has testified that the variation in moisture content of coal occurs after the coal has left the mine. He has said that the variation may reach from 1 to 15 per cent.

“Q. Is that 15 per cent a percentage found in actual commercial practice? A. It is.

Q. Is this change in weight recognized commercially? A. It is.

Q. *Can you give an instance of that?*

Mr. ROCHE.—One minute. That is objected to, may it please the Court, as calling for the opinion of the witness and as being something which is not the subject of expert evidence.

The COURT.—The objection is sustained.

Mr. OLNEY.—It is not a matter of opinion; I am asking him to give an instance where it is recognized commercially.

The COURT.—Even that is not a material matter here.”

To which ruling of the Court the defendants then [2235] and there duly and regularly excepted.

XLVII.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness Parr upon his direct examination:

“Q. Will you state what you did, Professor Parr, and also state what you found?”

(The witness had immediately before this question was propounded to him testified that he had made experiments or tests with the buckets on the

barges to ascertain how full or what weight of coal they had to contain in order to tip.)

To which ruling of the Court the defendants then and there duly and regularly excepted.

XLVIII.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness Somermeier upon re-direct examination:

“Mr. OLNEY.—Q. You have stated in response to a question of Mr. Sullivan’s that your conclusions on oxidation are conservative. How do your figures and observations compare with those of others?”

The reporter’s transcript immediately following said question reads thus:

“Mr. SULLIVAN.—We object to that as incompetent.

The COURT.—The objection is sustained. He has testified to what he has done as a chemist, and he has given the actual results found by him.

Mr. OLNEY.—That is in response to a question put by them, if your Honor please, where they were questioning the [2236] “conversatism or the accuracy of his figures which were based on his general observation. Now, I take it that he has the right to compare his ideas and his results with those given by other people, according to his knowledge.

The COURT.—Under the same conditions, and doing the same work, or operating on the same thing, and at the same time, perhaps that would be true, but then you would not get any further than you have with his results and his experiments. It is just

the same proposition of supporting one expert by showing that his result corresponded with the result reached by another expert who is not here.

Mr. OLNEY.—No, your Honor, but the witness is here testifying as an expert, and he says, ‘I got these results, this is my opinion in this case’; now, when he is asked whether or not he is sure of that opinion, whether or not it may be too great or too little, then certainly he has got the right to say, and we have the right to bring it out on direct examination, that his opinion, as compared with the opinion of other men, other people in the same line, the general consensus of opinion of investigators in this matter, is on the conservative side.

The COURT.—I don’t think so; the objection is sustained. He has told us what he has done, what results he has obtained, and how he obtained them, and he has stated to us that this is conservative.”

To which ruling of the Court the defendants then and there duly and regularly excepted. [2237]

XLIX.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness Folsom on his direct examination.

The witness has testified to certain experiments that he made on the scales at Folsom Street:

“Q. What difference would there be, in your opinion, and according to your observation, between weighing with an exactly poised beam and weighing with a beam that was caught as it was coming up, that is, weighing in a commercial manner?”

The reporter's transcript immediately following this question reads:

"Mr. ROCHE.—That is objected to upon the ground that that is not the subject of expert evidence. He has already testified to the actual experiments.

Mr. OLNEY.—The point of the matter is, if the Court please, that there is a difference between weighing with a beam which is just poised below the top of the scale and a weight which is taken as it is testified here the weights are taken, with the beam coming up and being caught before it is permitted to poise, the weigher judging of the speed with which it is coming up.

The COURT.—Is that a matter that can be determined by actual observation?

Mr. OLNEY.—I think not. Well, it is a matter as to which you could not go down there and say in any particular case, your Honor, but it is a matter that a [2238] "person watching it could form an estimate as to what the difference would be.

The COURT.—The objection is sustained."

To which ruling of the Court the defendants then and there duly and regularly excepted.

L.

The Court erred in sustaining the objection interposed by the plaintiff to the question underlined (italicized in printed transcript) in the following extract from the redirect examination of the witness Folsom:

"Q. You have been cross-examined here about tests which were made by soaking the coal; did you

make any tests outside of this test with the bin, to which you have testified, where the coal was not soaked, but was merely exposed to the weather?

A. Yes, sir, I made a number of those tests.

A. And did those tests show the same results?

Mr. SULLIVAN.—We object to that, your Honor, as not redirect.

The COURT.—Oh, we can't let this matter be reopened now.

Mr. OLNEY.—I am not endeavoring to reopen it, your Honor.

The COURT.—We never would get through in a thousand years.

Mr. SULLIVAN.—This is not proper redirect examination. [2239]

“Mr. OLNEY.—If your Honor, please, they picked out certain tests, here, tests of soaking the coal; running along with them, were tests where the coal was exposed to the weather; I simply want to bring out the fact that these tests were not confined to the tests of soaking the coal, that there were other tests, where the coal was simply exposed to the weather.

The COURT.—The objection is sustained. You made the case you desired to make when you put him on the stand.”

To which ruling of the Court the defendants then and there duly and regularly excepted.

LI.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness Jansen on his redirect examination.

“Q. And when you say that coal came in the yard and remained for a short time, that it increased to the extent of two per cent, you mean that was the average increase of the entire stock of coal?”

To which ruling of the Court the defendants then and there duly and regularly excepted.

LII.

The Court erred in sustaining the objection interposed by the plaintiff to the question underlined (italicized in printed transcript) in the extract below, propounded upon direct examination of the witness Moreno, formerly agent of the Pacific Mail S. S. Company at Acapulco, Mexico: [2240]

“Q. And what experience did you have with the coal overrunning?

Mr. ROCHE.—That question is objected to, may it please the Court, as immaterial, irrelevant and incompetent, and upon the further ground that no proper foundation has been laid, and no similarity exists in the method described by the witness as to the method of weighing coal imported into the port of San Francisco, or sold by the dealers in San Francisco, and upon the further ground that no proper foundation has been laid in this—that it has not been shown that the climatic conditions there have been and are the same as the climatic conditions have been and are in San Francisco.

The COURT.—The objection is sustained.

Mr. KNIGHT.—Q. *Will you state how the winter climate at Acapulco compares with the winter climate at San Francisco, taking for instance this winter as an illustration?*

Mr. ROCHE.—That question is objected to upon the same grounds, particularly in view of the fact that the witness has already described the method of weighing there.

Mr. McCUTCHEN.—If your Honor please, it is important here unless it is conceded now,—I don't know whether it is or not, it may be at this stage of the case, that the addition of moisture increases the weight of coal. It makes no difference whether that moisture is added in San Francisco or in Acapulco, if the experience of the witness shows that the addition of moisture does account for a considerable exchange of weight, we have the right to show that experience, and particularly with the class of coals we are [2241] dealing with here.

The COURT.—The objection is sustained. We have had testimony—this is only cumulative, and it would be cumulative upon conditions that in the nature of which are not the same as the conditions here.

Mr. STANLEY MOORE.—An exception.

Mr. KNIGHT.—That is, I understand your Honor's ruling to cover any testimony which would go to show what the behavior of coal similar to coal situated in Acapulco is because it was there in Acapulco and subject to a different method of weighing in Acapulco than the method that has been in vogue here.

The COURT.—Yes, and different climatic conditions.

Mr. KNIGHT.—With your Honor's permission I will ask a question touching the climatic conditions,

so as to remove that feature of the objection. I will ask the witness to state what is the comparative winter climate of Acapulco and San Francisco?

Mr. SULLIVAN.—How far is that from the Equator?

Mr. KNIGHT.—Oh, I don't know how far Acapulco is from the Equator.

A. I think it is in 17 north.

Q. And what are we here?

Mr. SULLIVAN.—37, is it not?

Mr. KNIGHT.—I don't know.

Q. How does the rainfall compare with the rainfall, for instance up to this time, this winter in San Francisco, how does the rainfall there compare with our [2242] rainfall during this winter in San Francisco?

A. I never have seen it rain as heavily as it has in the last month in San Francisco, in the month of January.

Q. Do you know what the average rainfall in Acapulco is in the winter? A. No, sir, I couldn't say.

Q. But you think the winter is not as severe there from the standpoint of rain as it has been in San Francisco this winter? A. No, sir.

Q. Is that coal stored in the open?

A. Yes, sir, it is stored in the open.

Q. Do you know where that coal comes from—that is, whether the Western Fuel Company sells any of that coal to the Pacific Mail Steamship Company?

A. They have sold coal to the Pacific Mail Steamship Company, yes, sir.

Q. What kind of coal?

A. New Wellington coal.

Mr. KNIGHT.—Now, your Honor, while of course it is cumulative in a sense because it simply goes to sustain other witnesses who have been offered, yet in view of the particular experience of this witness and the particular records which he kept of each particular kind of coal, we offer this evidence to the jury for the purpose of demonstrating the fact which we contend for that coal does increase by moisture to the extent which this witness will testify.

Mr. ROCHE.—Now, just a minute, if your Honor please.

The COURT.—The objection is sustained.”

To which ruling of the Court the defendants then and there duly and regularly excepted. [2243]

LIII.

The Court erred in overruling the objection interposed by the defendants to the following question propounded to the witness, defendant E. H. Mayer, upon his cross-examination:

“Q. When they (referring to the custom-house weighers) did work overtime, did you not, while you were on the bunkers, pay the custom-house officers overtime, between those dates, between 1906 and 1912?”

To which ruling of the Court the defendants then and there duly and regularly excepted.

LIV.

The Court erred in overruling the objection interposed by the defendants to the following question propounded to the witness, defendant E. H. Mayer, upon his cross-examination:

“Q. At that time (referring to the time between 1906 and 1912 when the witness paid the Government custom-house weighers overtime) did you know that the weighers who worked overtime were always allowed by the Government a day off for overtime at night?”

To which ruling of the Court the defendants then and there duly and regularly excepted.

LV.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness Tidwell upon his further cross-examination:

“Q. I want to ask you this question, Mr. Tidwell: Have you referred the question of the increase in the weight of coal due to moisture to the United States Bureau of Mines?”

To which ruling of the Court the defendants then and there duly and regularly excepted. [2244]

LVI.

The Court erred in sustaining the objections interposed by the plaintiff to the following question propounded to the witness Tidwell during his direct examination as a witness called by the defendants:

“Q. Do you recall when it was you next talked with Mr. Powers about this matter?”

To which ruling of the Court the defendants then and there duly and regularly excepted.

The immediately preceding testimony leading up to and giving the context of this question was as follows:

“Mr. STANLEY MOORE.—Q. Mr. Tidwell, did

you ever have any further conversation with Mr. Powers in which you stated to him that this proportion of the reward would come out of a civil suit to follow after the trial of the criminal suit?

A. I do not recall any such conversation as that.

Q. When did you tell Mr. Powers that he might expect to receive the reward?

A. I don't know that I ever told him, for the reason that I haven't the authority to grant the reward.

Q. You say you have not the authority to grant the reward? A. No, sir.

Q. Have you had any correspondence with respect to the matter of reward?

The COURT.—This is not impeaching, Mr. Moore; this is not anything except fishing.

Mr. STANLEY MOORE.—Well, your Honor, even so I think we are entitled to know that. [2245]

The COURT.—I don't think so. If you put a witness on the stand you are presumed to know what he is going to testify to.

Mr. STANLEY MOORE.—Your Honor, that is a violent assumption in the case of Mr. Tidwell.

The COURT.—Then it is your mistake in putting him on the stand.

Mr. STANLEY MOORE.—Your Honor, it did occur to me to go and ask Mr. Tidwell about these things, but I thought it would be a delicate matter for me to do so, and I refrained from doing so on that account.

The COURT.—I have given you latitude enough in this matter.

Mr. STANLEY MOORE.—Very well, your Honor.”

(Here follows immediately the question first above quoted and objected to by the plaintiff.)

LVII.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness, defendant F. C. Mills, upon his direct examination :

Mr. STANLEY MOORE.—Q. Now, Mr. Mills, the public accountants examining these books of yours (referring to the hereinbefore mentioned—see Assignments XIV to XVII inclusive—dock diaries or journals kept by the defendant Mills) state that there is an average overrun on those barges during the entire year under investigation here of 4.88 per cent; I want to ask you whether it is possible for one of those barges to overrun 20, or 30, or 40 per cent?”

To which ruling of the Court the defendants then and there duly and regularly excepted. [2246]

LVIII.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness, defendant F. C. Mills, upon his direct examination :

“Mr. STANLEY MOORE.—Q. Now, for example, they mentioned the ‘Nanaimo’ in February, 1906, and they credit the ‘Nanaimo’ with an overrun of 32.5 per cent. I want to ask you this question, and don’t answer it unless the court tells you that you may: Whether or not it would be possible to trip those buckets and dump the coal on the ‘Nanaimo’ to

the extent that it would overrun the quantity of coal actually received by her to the extent of 32.5 per cent?"

To which ruling of the Court, the defendants then and there duly and regularly excepted.

LIX.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness, defendant F. C. Mills, upon his direct examination:

"Q. How important is it, so far as the business of the company is concerned that absolutely accurate track be kept of an account of the coal that is laden into the barge?

Mr. ROCHE.—That is objected to as immaterial.

Mr. STANLEY MOORE.—I will put it so far as the discharge of his duties are concerned.

The COURT.—That does not make any difference, whether it is important or not; the question is has it been done.

The objection is sustained."

To which ruling of the Court the defendants then and there duly excepted. [2247]

and there duly and regularly excepted. [2247]

LX.

The Court erred in sustaining the objection interposed by the plaintiff to the following question propounded to the witness, defendant F. C. Mills, upon his direct examination:

"Q. How much do you think any of those barges ever did as long as you have been connected with this company actually and as a matter of fact exceed by its out-turn weight the amount that had been charged into it?

Mr. ROCHE.—That is objected to as calling for the opinion and the conclusions of the witness.

Mr. STANLEY MOORE.—I think he can give that, your Honor.

The COURT.—The objection is sustained.”

To which ruling of the Court the defendants then and there duly and regularly excepted.

LXI.

The Court erred in abusing its judicial discretion in denying the motion of the above-named defendants, and of each of them, for a new trial hereof; and, in this connection, in refusing to hold and decide, as next hereinafter set forth in sections (1), (2), (3), (4), (5), (6), (7) and (8),

(1) That the verdict herein was contrary to the evidence adduced upon the trial hereof;

(2) That said evidence was insufficient to justify said verdict;

(3) That the evidence herein was insufficient to [2248] justify the verdict that each or any of said defendants had entered into a conspiracy set forth in the indictment herein, or into any part of said conspiracy;

(4) That the evidence herein was insufficient to justify the said verdict that each or any of the said defendants performed any of the overt acts set forth in said indictment, or any other acts, in pursuance or furtherance of said alleged conspiracy;

(5) That said verdict was contrary to law for the reasons in this Assignment of Errors particularly set forth;

(6) That during the course of the trial hereof

said jury, and certain members thereof, received evidence out of court prejudicial to these defendants, and each of them, other than that resulting from a view of the premises involved herein, which prevented said defendants, and each of them, from receiving fair and due consideration on the trial hereof; and in this respect these defendants particularly specify the following evidence set out in the affidavits presented to the Court in connection with defendants' motion for a new trial hereof:

(a) The following entitled newspaper articles or editorials appearing on the dates specified in the San Francisco Examiner: "Coal Shipments and Atmosphere," in the issue of December 17, 1913; "Scientific Discovery Ruined by Cupid," in the issue of December 18, 1913; "He Earned the Money," in the issue of February 11, 1914.

(b) The newspaper article or cartoon entitled "Breaking Even. If the Consumers Ever Get a Chance to Sell a Ton of Coal to the Coal Man."

(c) The various articles in the newspapers of [2249] San Francisco and the neighboring cities purporting to state the proceedings taken upon the trial hereof.

(d) The newspaper article appearing in the Oakland Tribune in the issue of Sunday, February 8, 1914, entitled "Recalls Sugar Fraud History," signed "The Knave."

(On the 19th day of March, 1914, during the presentation of the motion on behalf of the defendants for a new trial herein, it was stipulated and admitted in open Court by counsel for plaintiff that the certain

Mr. Stuart Masters, referred to at intervals in the testimony upon the trial of this cause, was *the* Mr. Stuart Masters who was then seated in the courtroom as representative of, and as reporting the proceedings in this case for, the San Francisco Examiner, and that he had so represented and so reported the proceedings for said San Francisco Examiner during most of the trial of this case.)

(7) That said jury was, and certain members thereof were, guilty of misconduct by which such a fair and due consideration of the above-entitled cause was prevented, to the prejudice of these defendants, and each of them, as entitled each of said defendants to a new trial hereof, and such misconduct was committed by said jury, and certain members thereof, in the following respects, set out more at length in the affidavits hereinbefore and above referred to:

(a) By reading and circulating, or reading or circulating, the aforesaid newspaper article entitled "Coal Shipments and Atmosphere,"

(b) Also the aforesaid newspaper article entitled "Scientific Discovery Ruined by Cupid," [2250]

(c) Also the aforesaid newspaper article entitled "He Earned the Money,"

(d) Also the aforesaid newspaper article or cartoon entitled "Breaking Even. If the Consumers Ever Get a Chance to Sell a Ton of Coal to the Coal Man,"

(e) Also the aforesaid newspaper article entitled "Recalls Sugar Fraud History,"

(f) By discussing said cause among themselves, contrary to said Court's instructions, before said

cause was finally submitted to them for decision, and particularly by statements prejudicial to these defendants, and to each of them, made by one or more of said jurors to others of said jury before said cause was finally submitted to them for decision to the effect that said cause, or the method of conducting the business of the Western Fuel Company, with which these defendants were connected, or the method of operation of these defendants were crooked and similar to that alleged to have been employed by the American Sugar Company or Sugar Trust,

(g) By intimidation practised upon the juror, R. E. Herdman, so as to induce or compel him to join in a verdict of guilty as to each of these defendants.

(8) That the defendants, and each of them, were deprived of such fair and due consideration of their cause herein as they and each of them were of right entitled to, by the urgent pressure and insistence of the Court during the later stages of the trial herein that said trial should be brought to a speedy conclusion (and this after the plaintiff had been allowed ample time to put in its affirmative [2251] case) whereby the defendants had to forego placing certain important witnesses and notably certain stevedores upon the barges of the Western Fuel Company upon the stand (as in more detail appears in the affidavit of Stanley Moore, Esq., presented to Court upon defendants' motion for a new trial hereof, and whereby the cause of the defendants, and each of them, herein was gravely and materially imperiled and prejudiced—in the light of which circumstance and of other considerations hereinabove in this as-

signment specified it was error on the part of said Court to abuse its judicial discretion in denying the defendants herein and each of them a new trial hereof.

“The COURT.—I have been lulled into a sense of security so often, that I am going to take the matter into my own hands. We will take a recess until Friday morning. This case is going to be finished Friday night, if it takes till midnight.”

(9) That counsel for the plaintiff were guilty of manifest misconduct in their respective closing addresses to and in the presence of the jury upon the conclusion of the evidence herein, which misconduct was so prejudicial to the defendants herein and each of them as to entitle said defendants, and each of them, to a new trial hereof; and the portions of said addresses appearing hereinabove on pages 3 to 19 of this Assignment of Errors are hereby assigned as such misconduct. [2252]

WHEREAS, by the law of the land, said judgment ought to be given for said James B. Smith, F. C. Mills and E. H. Mayer, plaintiffs in error, and against the United States of America, defendant in error, said plaintiffs in error, James B. Smith, F. C. Mills and E. H. Mayer do now pray the judgment herein rendered against them and each of them to be reversed and annulled and altogether held for nothing, and the sentence herein imposed upon them, and each of them, respectively, to be set aside and held for naught, and that they, and each of them, be restored to all things which they have lost by occasion of the said judgment, and that they be afforded

such and any and all other relief as may be meet in the premises.

Dated at San Francisco, California, May 18, 1914.

McCUTCHEN, OLNEY & WILLARD,
STANLEY MOORE,
A. P. BLACK,
SAMUEL KNIGHT,

Attorneys for Said Defendants, James B. Smith,
F. C. Mills and E. H. Mayer.

[Endorsed]: Filed May 18, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [2253]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN L. HOWARD et al.,

Defendants.

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Order Allowing Writ of Error, Staying Sentence and
Execution, etc.**

Come now, James B. Smith, F. C. Mills and E. H. Mayer, defendants herein, and file herein and present

to the Court their petition praying for the allowance of a Writ of Error from the United States Circuit Court of Appeals, for the Ninth Circuit, to have the above-entitled court, and submit herewith the Assignment of Errors intended to be urged by them; [2254] praying also that a transcript of the record, proceedings and papers in this cause, duly authenticated, be sent to said United States Circuit Court of Appeals for the Ninth Circuit, and praying also that meanwhile all further proceedings in the above-entitled district court be suspended, stayed and superseded, and that sentence and execution herein be stayed until the final disposition of said Writ of Error in the aforesaid United States Circuit Court of Appeals.

NOW THEREFORE, in consideration of the premises, and the Court being fully advised, and each of the above-named defendants having heretofore submitted to the above-entitled court his respective bond for appearance in the United States District Court, for the Northern District of California, or in the United States Circuit Court of Appeals for the Ninth Circuit, or in the Supreme Court of the United States of America, as may hereafter in this cause be ordered, in the sums following, to wit, defendant, James B. Smith, in the sum of ten thousand (10,000) dollars, defendant, F. C. Mills, in the sum of five thousand (5,000) dollars, and defendant, E. H. Mayer, in the sum of five thousand (5,000) dollars (said sums being the amount of bail heretofore fixed by this Court for each of said defendants, respectively, and said bonds, and each of them, having been

heretofore accepted and approved by this Court;

IT IS HEREBY ORDERED that the aforesaid Writ of Error be, and the same is, hereby allowed; and

IT IS FURTHER ORDERED that a transcript of the record, proceedings and papers in this cause, duly authenticated, [2255] be sent to the aforesaid United States Circuit Court of Appeals, for the Ninth Circuit; and

IT IS FURTHER ORDERED that all further proceedings in this above-entitled district court be suspended, stayed and superseded until the final disposition of said Writ of Error in the aforesaid United States Circuit Court of Appeals, for the Ninth Circuit; and

IT IS FURTHER ORDERED that sentence and execution herein be stayed until the final disposition of said Writ of Error in the aforesaid United States Circuit Court of Appeals, for the Ninth Circuit; and

IT IS FURTHER ORDERED that the bond for costs upon the Writ of Error herein be, and it is hereby fixed at the sum of Five Hundred Dollars, said bond to be entered into jointly by the three defendants hereinabove named.

Dated May 18, 1914.

M. T. DOOLING,

Judge of the United States District Court for the Northern District of California.

[Endorsed]: Filed May 18, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [2256]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. —.

JAMES B. SMITH, F. C. MILLS and E. H.
MAYER,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

Writ of Error (Copy).

United States of America,—ss.

The President of the United States of America, to
the Honorable, the Judges of the District Court
of the United States, for the Northern District
of California, Greeting:

Because, in the record and proceedings, as also in
the rendition of the judgment of a plea which is in
the said District Court, before the Honorable
Maurice T. Dooling, one of you, between the United
States of America, plaintiff and defendant in error,
and James B. Smith, F. C. Mills and E. H. [2257]
Mayer, defendants and plaintiffs in error, a manifest
error hath happened, to the great damage of the said
plaintiffs in error, and each of them, as by their com-
plaint appears:

We, being willing that error, if any hath been,
should be duly corrected, and full and speedy justice
done to the parties aforesaid in this behalf, do com-
mand you, if judgment be therein given, that then,

under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, this 18th day of May, in the year of our Lord one thousand nine hundred and fourteen.

[Seal]

W. B. MALING,
Clerk U. S. District Court.
By C. W. Calbreath,
Deputy Clerk.

Allowed by

M. T. DOOLING,
U. S. District Judge. [2258]

Service of the above Writ of Error made this 18th day of May, in the year of our Lord one thousand nine hundred and fourteen, upon the District Court of the United States, for the Northern District of California, by filing with me, as clerk of said court,

a duly certified copy of said Writ of Error.

[Seal]

W. B. MALING,

Clerk of the District Court of the United States for
the Northern District of California.

By C. W. Calbreath,

Deputy Clerk.

[Endorsed]: Filed May 18, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [2259]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. —.

JAMES B. SMITH, F. C. MILLS and E. H.
MAYER,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Citation on Writ of Error (Copy).

United States of America,—ss.

The President of the United States, to the United
States of America, and to MATTHEW I. SUL-
LIVAN, Esquire, and THEODORE J.
ROCHE, Esquire, Special Assistants to the At-
torney General of the United States, Greeting:

You are hereby cited and admonished to be and
appear at a United States Circuit Court of Appeals
for the Ninth Circuit, to be holden at the City of San
Francisco, in the State of California, within thirty

days from the date hereof, pursuant to a Writ of Error duly issued and [2260] now on file in the clerk's office of the United States District Court for the Northern District of California, wherein James B. Smith, F. C. Mills and E. H. Mayer are plaintiffs in error, and the United States of America is defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, this 18th day of May, in the year of our Lord one thousand nine hundred and fourteen.

M. T. DOOLING,
United States District Judge.

[Seal]

Attest: W. B. MALING,
Clerk.

By C. W. Calbreath,
Deputy Clerk. [2261]

Due and legal service of the above and foregoing citation, and receipt of a copy thereof, is hereby accepted and admitted, in the city and county of San Francisco, State of California, this 18th day of May, A. D. 1914.

MATT. I. SULLIVAN,
THEO J. ROCHE,

Special Assistants to the Attorney General of the
United States.

[Endorsed]: Filed May 18, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [2262]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN L. HOWARD et al.,

Defendants.

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Admission of Service [of Copies of Petition for Writ
of Error, etc.].**

Due and legal service this day of copies of the following papers and documents in the above-entitled cause is hereby accepted and admitted:

Petition for Writ of Error; Order Allowing Writ of Error; Sentence Staying Sentence and Execution, etc.; Writ of Error; Cost Bond.

Dated at San Francisco, California, this 18th day of May, A. D. 1914.

SULLIVAN & ROCHE,

Special Assistants to the Attorney General of the
United States.

[Endorsed]: Filed May 18, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [2263]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

Stipulation and Order Continuing Time for Settlement of Defendants' Bill of Exceptions to and Into the July Term, 1914.

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that the time for the above-entitled Court to settle the Bill of Exceptions of defendants, James B. Smith, F. C. Mills and E. H. Mayer, upon Writ of Error herein, may be continued and extended from the present March term, 1914, to and into the next succeeding July term, 1914, of said Court.

Dated at San Francisco, Cal., May 29th, 1914.

MATT. I. SULLIVAN,
THEO. J. ROCHE,

Special Assistants to the Attorney General of the
United States.

EDW'D J. McCUTCHEN,
WARREN OLNEY, Jr.,
SAM'L KNIGHT,
STANLEY MOORE,
A. P. BLACK,

Attorneys for Defendants. [2264]

Now on this day in the March term, 1914, pursuant to the above stipulation, and good cause appearing therefor,

IT IS HEREBY ORDERED that the time for this Court to settle the Bill of Exceptions of the above-named defendants upon Writ of Error herein be and the same is hereby continued and extended from the present March term, 1914, to and into the next succeeding July term, 1914, of this Court.

Dated at San Francisco, Cal., May 29, 1914.

M. T. DOOLING,
Judge of said Court.

[Endorsed]: Filed May 29, 1914, at 6 o'clock and 55 min. P. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [2265]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

Stipulation and Order Continuing Time for Settlement of Defendants' Bill of Exceptions to and Into the November Term, 1914.

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that the time for the above-entitled Court to

settle the Bill of Exceptions of defendants, James B. Smith, F. C. Mills and E. H. Mayer, upon Writ of Error herein, may be continued and extended from the present July term, 1914, to and into the next succeeding November term, 1914, of said Court.

Dated at San Francisco, Cal., October 27th, 1914.

THEO. J. ROCHE,

Special Assistant to the Attorney General of the
United States.

McCUTCHEN & OLNEY,

SAMUEL KNIGHT,

STANLEY MOORE,

A. P. BLACK,

PETER F. DUNNE,

Attorneys for Defendants. [2266]

Now on this day in the July term, 1914, pursuant to the above stipulation, and good cause appearing therefor,

IT IS HEREBY ORDERED that the time for this Court to settle the Bill of Exceptions of the above-named defendants upon Writ of Error herein be and the same is hereby continued and extended from the present July term, 1914, to and into the next succeeding November term, 1914, of this Court.

Dated at San Francisco, Cal., October 28th, 1914.

M. T. DOOLING,

Judge of said Court.

[Endorsed]: Filed Oct. 28, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [2267]

*In the District Court of the United States, for the
Northern District of California.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation (and Order) Extending Time for
Defendants to Prepare, Serve and File a Bill of
Exceptions, and for Stay of Execution of
Judgment to June 1, 1914.**

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that the defendants, James B. Smith, F. C., Mills and E. H. Mayer, herein, may have to and including the first day of June, 1914, within which to prepare, serve and file a bill of exceptions in the above-entitled cause;

IT IS FURTHER STIPULATED AND AGREED by and between the respective parties hereto that execution of the judgment rendered against the above-named defendants in said above-entitled cause may be stayed to and including the said first day of June, 1914.

Dated San Francisco, Cal., April 16th, 1914.

M. I. SULLIVAN,

THEO. J. ROCHE,

Special Assistants to the United States Attorney
General.

McCUTCHEN, OLNEY & WILLARD,

STANLEY MOORE,

SAMUEL KNIGHT,

A. P. BLACK,

Attorneys for Defendants.

It is so ORDERED by the Court.

Dated: April 17th, 1914.

WM. W. MORROW,

Judge.

[Endorsed]: Filed Apr. 17, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [2268]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation (and Order) Extending Time of
Defendants to Prepare, Serve, Settle and File
Their Bill of Exceptions to July 1, 1914.**

IT IS HEREBY STIPULATED AND
AGREED by and between the respective parties

hereto that the defendants herein, James B. Smith, F. C. Mills and E. H. Mayer, may have to and including the 1st day of July, 1914, within which to prepare, serve, settle and file their Bill of Exceptions upon Writ of Error in the above-entitled cause.

Dated at San Francisco, Cal., May 29th, 1914.

MATT. I. SULLIVAN,

THEO. J. ROCHE,

Special Assistants to the Attorney General of the United States.

EDW'D J. McCUTCHEN,

WARREN OLNEY, Jr.,

SAM'L KNIGHT,

STANLEY MOORE,

A. P. BLACK,

Attorneys for Defendants.

It is so ORDERED by the Court.

Dated at San Francisco, Cal., May 29, 1914.

M. T. DOOLING,

Judge.

[Endorsed]: Filed May 29, 1914, at 6 o'clock and 55 min. P. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [2269]

In the District Court of the United States, for the Northern District of California, First Division.

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

Stipulation (and Order) Extending Time of Defendants to Prepare, Serve, Settle and File Their Bill of Exceptions to August 1, 1914.

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that the defendants herein, James B. Smith, F. C. Mills and E. H. Mayer, may have to and including the 1st day of August, 1914, within which to prepare, serve, settle and file their Bill of Exceptions upon Writ of Error in the above-entitled cause.

Dated at San Francisco, Cal., June 23d, 1914.

M. I. SULLIVAN,

THEO. J. ROCHE,

Special Assistants to the Attorney General of the United States.

EDWARD J. McCUTCHEN,

WARREN OLNEY, Jr.,

SAMUEL KNIGHT,

STANLEY MOORE,

A. P. BLACK,

Attorneys for Defendants.

It is so ORDERED by the Court.

M. T. DOOLING,

Judge.

Dated at San Francisco, Cal., June 23d, 1914.

[Endorsed]: Filed Jun. 23, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [2270]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation (and Order) Extending Time of
Defendants to Prepare, Serve, Settle and File
Their Bill of Exceptions to August 15, 1914.**

IT IS HEREBY STIPULATED AND
AGREED by and between the respective parties
hereto that the defendants herein, James B. Smith,
F. C. Mills and E. H. Mayer, may have to and in-
cluding the 15th day of August, 1914, within which
to prepare, serve, settle and file their Bill of Excep-
tions upon Writ of Error in the above-entitled cause.

Dated at San Francisco, California, July 30th,
1914.

M. I. SULLIVAN,
THEO. J. ROCHE,

Special Assistants to the Attorney General of the
United States.

EDWARD J. McCUTCHEN,
WARREN OLNEY, Jr.,
SAMUEL KNIGHT,
STANLEY MOORE,
A. P. BLACK,

Attorneys for Defendants.

It is so ORDERED by the Court.

Dated at San Francisco, California, July 31st,
1914.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Jul. 31, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [2271]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation (and Order) Extending Time for
Defendants to Prepare and Serve Upon the
Adverse Party Draft of Their Proposed Bill of
Exceptions to September 1, 1914.**

IT IS HEREBY STIPULATED AND
AGREED by and between the respective parties
hereto that the defendants herein, James B. Smith,
F. C. Mills and E. H. Mayer, may have to and includ-
ing the first day of September, 1914, within which
to prepare and serve upon the adverse party herein
a draft of their Proposed Bill of Exceptions upon
Writ of Error in the above-entitled cause.

Dated at San Francisco, California, August 12,
1914.

MATT. I. SULLIVAN,
THEO. J. ROCHE,

Assistants to the Attorney General of the United
States.

EDW'D J. McCUTCHEN,
WARREN OLNEY, Jr.,
SAMUEL KNIGHT,
STANLEY MOORE,
A. P. BLACK,

Attorneys for Defendants.

It is so ORDERED by the Court.

Dated at San Francisco, California, August 13th,
1914.

WM. C. VAN FLEET,
Judge.

[Endorsed]: Filed Aug. 13, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [2272]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JAMES B. SMITH et al.,
Defendants.

**Stipulation (and Order) Extending Time for
Defendants to Prepare and Serve Upon the
Adverse Party Draft of Their Proposed Bill of
Exceptions to September 15, 1914.**

IT IS HEREBY STIPULATED AND
AGREED by and between the respective parties
hereto that the defendants herein, James B. Smith,
F. C. Mills and E. H. Mayer, may have to and in-
cluding the 15th day of September, 1914, within
which to prepare and serve upon the adverse party
herein a draft of their Proposed Bill of Exceptions
upon Writ of Error in the above-entitled cause.

Dated San Francisco, California, August 29th,
1914.

THEO. J. ROCHE,
Assistants to the Attorney General of the United
States.

EDWARD J. McCUTCHEN,
WARREN OLNEY, Jr.,
SAMUEL KNIGHT,
STANLEY MOORE,
A. P. BLACK,

Attorneys for Defendants.

IT IS SO ORDERED BY THE COURT.

Dated: San Francisco, California, Sept. 1st, 1914.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Sep. 1, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [2273]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation (and Order) Extending Time for
Defendants to Prepare and Serve Upon the
Adverse Party Draft of Their Proposed Bill of
Exceptions to October 1, 1914.**

IT IS HEREBY STIPULATED AND
AGREED by and between the respective parties
hereto that the defendants herein, James B. Smith,
F. C. Mills and E. H. Mayer, may have to and in-
cluding the 1st day of October, 1914, within which
to prepare and serve upon the adverse party herein
a draft of their Proposed Bill of Exceptions upon
Writ of Error in the above-entitled cause.

Dated San Francisco, Cal., September 11th, 1914.

THEO. J. ROCHE,

Assistant to the Attorney General of the United
States.

EDWARD J. McCUTCHEN,
WARREN OLNEY, Jr.,
SAMUEL KNIGHT,
STANLEY MOORE,
A. P. BLACK,

Attorneys for Defendants.

IT IS SO ORDERED BY THE COURT.

Dated : San Francisco, Cal., September 15th, 1914.

M. T. DOOLING,
Judge.

[Endorsed] : Filed Sep. 15, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [2274]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JAMES B. SMITH et al.,
Defendants.

**Stipulation (and Order) Extending Time for
Defendants to Prepare and Serve Upon the
Adverse Party Draft of Their Proposed Bill of
Exceptions to October 15, 1914.**

IT IS HEREBY STIPULATED AND
AGREED by and between the respective parties
hereto that the defendants herein, James B. Smith,
F. C. Mills and E. H. Mayer, may have to and in-
cluding the fifteenth day of October, 1914, within
which to prepare and serve upon the adverse party
herein a draft of their Proposed Bill of Exceptions
upon Writ of Error in the above-entitled cause.

Dated San Francisco, Cal., Sept. 29th, 1914.

THEO. J. ROCHE,

Assistant to the Attorney General of the United States.

PETER F. DUNNE,

STANLEY MOORE,

Attorneys for Defendants.

IT IS SO ORDERED BY THE COURT:

Dated: San Francisco, Cal., Sept. 30th, 1914.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Sep. 30, 1914. W. B. Maling,
Clerk. By Lyle S. Morris, Deputy Clerk. [2275]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation (and Order) Extending Time for
Defendants to Engross and Have Settled the Bill
of Exceptions to November 15, 1914.**

IT IS HEREBY STIPULATED AND AGREED
by and between the respective parties hereto that
the defendants herein, James B. Smith, F. C. Mills
and E. H. Mayer, may have to and including the
15th day of November, 1914, within which to engross

and have settled the Bill of Exceptions upon Writ of Error in the above-entitled cause.

Dated: San Francisco, Cal., October 15th, 1914.

THEO. J. ROCHE,

Assistant to the Attorney General of the United States.

McCUTCHEN, OLNEY & WILLARD,
PETER F. DUNNE,
STANLEY MOORE,

Attorneys for Defendants.

IT IS SO ORDERED BY THE COURT.

Dated: San Francisco, Cal., October 15, 1914.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Oct. 15, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [2276]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation (and Order) Extending Time for
Defendants to Engross and Have Settled the Bill
of Exceptions to December 1, 1914.**

IT IS HEREBY STIPULATED AND AGREED
by and between the respective parties hereto that
the defendants herein, James B. Smith, F. C. Mills

and E. H. Mayer, may have to and including the 1st day of December, 1914, within which to engross and have settled the Bill of Exceptions upon Writ of Error in the above-entitled cause.

Dated: San Francisco, Cal., November 13, 1914.

THEODORE J. ROCHE,

Assistant to the Attorney General of the United States.

PETER F. DUNNE,

STANLEY MOORE,

Attorneys for Defendants.

IT IS SO ORDERED BY THE COURT.

Dated: San Francisco, Cal., November 13th, 1914.

WM. C. VAN FLEET,

Judge.

[Endorsed]: Filed Nov. 13, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [2277]

In the District Court of the United States, for the Northern District of California, First Division.

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

Stipulation (and Order) Extending Time for Defendants to Engross and Have Settled the Bill of Exceptions to December 15, 1914.

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that

the defendants herein, James B. Smith, F. C. Mills and E. H. Mayer, may have to and including the 15th day of December, 1914, within which to engross and have settled the Bill of Exceptions upon Writ of Error in the above-entitled cause.

Dated: San Francisco, Cal., November 30th, 1914.

THEO. J. ROCHE,

Assistant to the Attorney General of the United States.

PETER F. DUNNE,

STANLEY MOORE,

Attorneys for Defendants.

IT IS SO ORDERED BY THE COURT.

Dated: San Francisco, Cal., November 30th, 1914.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Nov. 30, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [2278]

In the District Court of the United States, for the Northern District of California, First Division.

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

Stipulation (and Order) Extending Time for Defendants to Engross and Have Settled the Bill of Exceptions to January 15, 1914.

IT IS HEREBY STIPULATED AND AGREED

by and between the respective parties hereto that the defendants herein, James B. Smith, F. C. Mills and E. H. Mayer, may have to and including the 15th day of January, 1915, within which to engross and have settled the Bill of Exceptions upon Writ of Error in the above-entitled cause.

Dated: San Francisco, Cal., December 15th, 1914.

THEO. J. ROCHE,

Assistant to the Attorney General of the United States.

PETER F. DUNNE,

STANLEY MOORE,

Attorneys for Defendants.

IT IS SO ORDERED BY THE COURT.

Dated: San Francisco, Cal., December 15th, 1914.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Dec. 15, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [2279]

In the District Court of the United States, for the Northern District of California, First Division.

No. 5233,

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation (and Order) Extending Time for
Defendants to Engross and Have Settled the Bill
of Exceptions to January 20, 1915.**

IT IS HEREBY STIPULATED AND AGREED
by and between the respective parties hereto that
the defendants herein, James B. Smith, F. C. Mills
and E. H. Mayer, may have to and including the
20th day of January, 1915, within which to engross
and have settled the Bill of Exceptions upon Writ of
Error in the above-entitled cause.

Dated: San Francisco, Cal., January 14th, 1915.

THEO. J. ROCHE,

Assistant to the Attorney General of the United
States.

PETER F. DUNNE,

STANLEY MOORE,

Attorneys for said Defendants.

IT IS SO ORDERED BY THE COURT.

Dated: San Francisco, Cal., January 15th, 1915.

WM. C. VAN FLEET,

Judge.

[Endorsed]: Filed Jan. 15, 1915. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [2280]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation (and Order) Enlarging Time of
Defendants to October 1, 1914, to File Record
and Docket Case.**

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that the time of the defendants herein, James B. Smith, F. C. Mills and E. H. Mayer, for filing the record hereof and docketing this case on writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to the District Court of the United States for the Northern District of California, may be enlarged to and including the first day of October, 1914.

Dated: San Francisco, California, September 15th, 1914.

THEO. J. ROCHE,

Assistant to the Attorney General of the United States.

EDWARD J. McCUTCHEN,
WARREN OLNEY, Jr.,
SAMUEL KNIGHT,
STANLEY MOORE,
A. P. BLACK,

Attorneys for Defendants, James B. Smith, F. C. Mills and E. H. Mayer. [2281]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Order Enlarging Time of Defendants to October 1,
1914, to File Record and Docket Case.**

Now, at this day, for good cause shown and pursuant to the foregoing stipulation,

IT IS HEREBY ORDERED that the time of the defendants herein, James B. Smith, F. C. Mills and E. H. Mayer, for filing the record hereof and docketing this case on writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to the District Court of the United States for the Northern District of California, be and the same is hereby enlarged to and including the first day of October, 1914.

Dated: San Francisco, California, September 15, 1914.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Sep. 15, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [2282]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation Enlarging Time of Defendants to
October 15, 1914, to File Record and Docket
Case.**

IT IS HEREBY STIPULATED AND AGREED
by and between the respective parties hereto that the
time of the defendants herein, James B. Smith, F. C.
Mills and E. H. Mayer, for filing the record hereof
and docketing this case on writ of error from the
United States Circuit Court of Appeals for the Ninth
Circuit to the District Court of the United States for
the Northern District of California, may be enlarged
to and including the fifteenth day of October, 1914.

Dated: San Francisco, California, Sept. 29th, 1914.

THEO. J. ROCHE,

Assistant to the Attorney General of the United
States.

PETER F. DUNNE,

STANLEY MOORE,

Attorneys for Defendants James B. Smith, F. C.
Mills and E. H. Mayer. [2283]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Order Enlarging Time of Defendants to October 15,
1914, to File Record and Docket Case.**

Now, at this day, for good cause shown and pursuant to the foregoing stipulation,

IT IS HEREBY ORDERED that the time of the defendants herein, James B. Smith, F. C. Mills and E. H. Mayer, for filing the record hereof and docketing this case on writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to the District Court of the United States for the Northern District of California, be and the same is hereby enlarged to and including the fifteenth day of October, 1914.

Dated: San Francisco, California, Sept. 30th, 1914.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Sep. 30, 1914. W. B. Maling,
Clerk. By Lyle S. Morris, Deputy Clerk. [2284]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JAMES B. SMITH et al.,
Defendants.

**Stipulation Enlarging Time of Defendants to
November 15, 1914, to File Record and Docket
Case.**

IT IS HEREBY STIPULATED AND AGREED
by and between the respective parties hereto that the
time of the defendants herein, James B. Smith, F. C.
Mills and E. H. Mayer, for filing the record hereof
and docketing this case on writ of error from the
United States Circuit Court of Appeals for the Ninth
Circuit to the District Court of the United States for
the Northern District of California, may be enlarged
to and including the 15th day of November, 1914.

Dated, San Francisco, Cal., October 15th, 1914.

THEO. J. ROCHE,
Assistant to the Attorney General of the United
States.

McCUTCHEN, OLNEY & WILLARD,
PETER F. DUNNE,
STANLEY MOORE,

Attorneys for Defendants James B. Smith, F. C.
Mills and E. H. Mayer. [2285]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Order Enlarging Time of Defendants to November
15, 1914, to File Record and Docket Case.**

Now, at this day, for good cause shown and pursuant to the foregoing stipulation,

IT IS HEREBY ORDERED that the time of the defendants herein, James B. Smith, F. C. Mills and E. H. Mayer, for filing the record hereof and docketing this case on writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to the District Court of the United States for the Northern District of California, be and the same is hereby enlarged to and including the 15th day of November, 1914.

Dated, San Francisco, Cal., October 15, 1914.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Oct. 15, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [2286]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

Stipulation Enlarging Time of Defendants to December 1, 1914, to File Record and Docket Case.

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that the time of the defendants herein, James B. Smith, F. C. Mills and E. H. Mayer, for filing the record hereof and docketing this case on writ of error from the United States Circuit Court of Appeals for the *North* Circuit to the District Court of the United States for the Northern District of California, may be enlarged to and including the 1st day of December, 1914.

Dated, San Francisco, Cal., November 15, 1914.

THEO. J. ROCHE,

Assistant to the Attorney General of the United States.

PETER F. DUNNE,

STANLEY MOORE,

Attorneys for Said Defendants. [2287]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Order Enlarging Time of Defendants to December
1, 1914, to File Record and Docket Case.**

Now, at this day, for good cause shown and pursuant to the foregoing stipulation,

IT IS HEREBY ORDERED that the time of the defendants herein, James B. Smith, F. C. Mills and E. H. Mayer, for filing the record hereof and docketing this case on writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to the District Court of the United States for the Northern District of California, be and the same is hereby enlarged to and including the 1st day of December, 1914.

Dated, San Francisco, Cal., November 14th, 1914.

WM. C. VAN FLEET,

Judge.

[Endorsed]: Filed Nov. 14, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [2288]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation Enlarging Time of Defendants to
December 15, 1914, to File Record and Docket
Case.**

IT IS HEREBY STIPULATED AND AGREED
by and between the respective parties hereto that
the time of the defendants herein, James B.
Smith, F. C. Mills and E. H. Mayer, for filing the
record hereof and docketing this case on writ of error
from the United States Circuit Court of Appeals for
the *North* Circuit to the District Court of the United
States for the Northern District of California, may
be enlarged to and including the 15th day of Decem-
ber, 1914.

Dated, San Francisco, Cal., November 30th, 1914.

THEO. J. ROCHE,

Assistant to the Attorney General of the United
States.

PETER F. DUNNE,

STANLEY MOORE,

Attorneys for said Defendants. [2289]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Order Enlarging Time of Defendants to December
15, 1914, to File Record and Docket Case.**

Now, at this day, for good cause shown and pursuant to the foregoing stipulation,

IT IS HEREBY ORDERED that the time of the defendants herein, James B. Smith, F. C. Mills and E. H. Mayer, for filing the record hereof and docketing this case on writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to the District Court of the United States for the Northern District of California, be and the same is hereby enlarged to and including the 15th day of December, 1914.

Dated, San Francisco, Cal., November 30th, 1914,

M. T. DOOLING,

Judge.

[Endorsed]: Filed Nov. 30, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [2290]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation Enlarging Time of Defendants to
January 15, 1915, to File Record and Docket
Case.**

IT IS HEREBY STIPULATED AND AGREED
by and between the respective parties hereto that the
time of the defendants herein, James B. Smith, F. C.
Mills and E. H. Mayer, for filing the record hereof
and docketing this case on writ of error from the
United States Circuit Court of Appeals for the Ninth
Circuit to the District Court of the United States for
the Northern District of California, may be enlarged
to and including the 15th day of January, 1915.

Dated, San Francisco, Cal., December 15th, 1914.

THEO. J. ROCHE,

Assistant to the Attorney General of the United
States.

PETER F. DUNNE,

STANLEY MOORE,

Attorneys for said Defendants. [2291]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH,

Defendants.

**Order Enlarging Time of Defendants to January 15,
1915, to File Record and Docket Case.**

Now, at this day, for good cause shown and pursuant to the foregoing stipulation,

IT IS HEREBY ORDERED that the time of the defendants herein, James B. Smith, F. C. Mills, and E. H. Mayer, for filing the record hereof and docketing this case on writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to the District Court of the United States for the Northern District of California, be and the same hereby is enlarged to and including the 15th day of January, 1915.

Dated, San Francisco, Cal., December 15th, 1914.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Dec. 15, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [2292]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation Enlarging Time of Defendants to
January 20, 1915, to File Record and Docket
Case.**

IT IS HEREBY STIPULATED AND AGREED
by and between the respective parties hereto that
the time of the defendants herein, James B. Smith,
F. C. Mills and E. H. Mayer, for filing the record
hereof and docketing this case on writ of error from
the District Court of the United States for the North-
ern District of California, to the United States Cir-
cuit Court of Appeals for the Ninth Circuit, may be
enlarged to and including the 20th day of January,
1915.

Dated, San Francisco, Cal., January 14th, 1915.

THEO. J. ROCHE,

Assistant to the Attorney General of the United
States.

STANLEY MOORE,

Attorney for said Defendants.

It is so ordered.

WM. C. VAN FLEET,

Judge.

[Endorsed]: Filed Jan. 15, 1915. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [2293]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation Enlarging Time of Defendants to Feb-
ruary 19, 1915, to File Record and Docket
Case.**

IT IS HEREBY STIPULATED AND AGREED
by and between the respective parties hereto that the
time of the defendants herein, James B. Smith, F. C.
Mills and E. H. Mayer, for filing the record hereof
and docketing this case on Writ of Error from the
District Court of the United States for the Northern
District of California, to the United States Circuit
Court of Appeals for the Ninth Circuit, may be en-
larged to and including the 19 day of February, A. D.
1915.

Dated, San Francisco, Calif., January 19th, A. D.
1915.

THEO. J. ROCHE,

Assistant to the Attorney General of the United
States.

PETER F. DUNNE,

STANLEY MOORE,

Attorney for said Defendants.

IT IS SO ORDERED BY THE COURT.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Jan. 19, 1915. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [2294]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Stipulation Enlarging Time of Defendants to Feb-
ruary 28, 1915, to File Record and Docket
Case.**

It is hereby stipulated and agreed by and between the respective parties hereto that the time of the defendants herein, James B. Smith, F. C. Mills and E. H. Mayer, for filing the record hereof and docketing this case on writ of error to the United States Circuit Court of Appeals for the Ninth Circuit from the District Court of the United States for the Northern District of California, may be enlarged to and including the 28th day of February, 1915.

Dated, San Francisco, Cal., February 19th, 1915.

THEO. J. ROCHE,

Assistant to the Attorney General.

PETER F. DUNNE,

STANLEY MOORE,

Attorneys for said Defendants. [2295]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Order Enlarging Time of Defendants to February
28, 1915, to File Record and Docket Case.**

Now, at this day, for good cause shown and pursuant to the foregoing stipulation,

IT IS HEREBY ORDERED that the time of the defendants herein, James B. Smith, F. C. Mills and E. H. Mayer, for filing the record hereof and docketing this case on writ of error to the United States Circuit Court of Appeals for the Ninth Circuit from the District Court of the United States for the Northern District of California, be and the same hereby is enlarged to and including the 28th day of February, 1915.

Dated, San Francisco, Cal., February 18th, 1915.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Feb. 18, 1915. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [2296]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN L. HOWARD et al.,

Defendants.

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

**Bond for Costs on Writ of Error to the District
Court of the United States for the Northern
District of California.**

KNOW ALL MEN BY THESE PRESENTS:
That we, James B. Smith, F. C. Mills, and E. H. Mayer, as principals, and Globe Indemnity Company, a corporation, as surety, are held and firmly bound unto the United States of America in the full and just sum of Five Hundred Dollars, to be paid to the said United States of America, to which payment, well and truly to be made, we bind ourselver, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 18th day of

May, in the year of our Lord one thousand nine hundred and fourteen.

WHEREAS, lately at a District Court of the United States, for the Northern District of California, in a suit depending in said court, between the United States of America, plaintiff, and [2297] James B. Smith, F. C. Mills and E. H. Mayer, defendants, a judgment and sentence were rendered against the said James B. Smith, and against the said F. C. Mills, and against the said E. H. Mayer, and the said James B. Smith, and the said F. C. Mills, and the said E. H. Mayer having obtained from said court a writ of error to reverse the said judgment and sentence against them, and each of them, in the aforesaid cause, and a citation directed to the said United States of America, citing and admonishing it to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California, thirty (30) days from and after the day of said citation, which citation has been duly served;

NOW, the condition of the above obligation is such, that if the said James B. Smith, and the said F. C. Mills, and the said E. H. Mayer shall prosecute said writ of error to effect, and answer all costs involved therein, then the above obligation to be void; else to remain in full force and virtue.

JAMES B. SMITH. (Seal)

FRED. C. MILLS. (Seal)

EDWARD H. MAYER. (Seal)

GLOBE INDEMNITY COMPANY,

By HARRY W. LOBB. (Seal)

Acknowledged before me the day and year first above written.

[Seal] FRANCIS KRULL,
United States Commissioner North'n Dist. of California.

Form of bond and sufficiency of surety approved.
M. T. DOOLING,
Judge.

[Endorsed]: Filed May 18, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [2298]

(Bond to Appear of Defendant Jas. B. Smith.)

United States of America,
Northern District of California,—ss.

BE IT REMEMBERED, that on this 20th day of March, in the year of our Lord one thousand nine hundred and fourteen before the undersigned, a United States Commissioner, duly appointed by the District Court of the United States for the Northern District of California, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress, in that behalf, personally appeared James B. Smith, as principal, and Globe Indemnity Company, as surety, and jointly and severally acknowledged themselves to be indebted to the United States of America in the sum of Ten Thousand (\$10,000.00) Dollars, separately to be levied and made out of their respective goods and chattels, lands and tenements, to the use of the said United States.

The conditions of the above recognizance is such, that, whereas an indictment has been found by the Grand Jury of the United States for the Northern District of California, and filed on the 27th day of February, A. D. 1913, in the District Court of the United States, for said Northern District of California, charging the said James B. Smith with conspiring to defraud the United States Government, theretofore committed at the District aforesaid, contrary to the form of the statute of the United States, in such case made and provided.

AND WHEREAS, a verdict of guilty on said indictment was rendered on February 18th, 1914, and on March 19th, 1914, the Court sentenced the said defendant James B. Smith to imprisonment in the penitentiary at San Quentin for the period of eighteen months, and to pay a fine of \$5,000.00 and the said Court thereupon granted a [2299] stay of execution of judgment for thirty (30) days, and made an order admitting the said defendant James B. Smith to bail in the sum of Ten Thousand (\$10,000.00) Dollars during the pendency of proceedings on appeal and during said stay of execution and during all other stays of execution of proceedings that may hereafter be granted.

AND WHEREAS, the said James B. Smith has been required to give a recognizance, with sureties, in the sum of Ten Thousand (\$10,000.00) Dollars for his appearance.

NOW THEREFORE, if the said James B. Smith shall personally appear at the District Court of the United States, for the Northern District of Cali-

fornia, to be holden at the courtroom of said Court, in the City of San Francisco, on the 18th day of April, A. D. 1914, at 10 o'clock in the forenoon of that day, and afterward whenever or wherever he may be required to answer the said indictment and said judgment and all matters and things that may be objected against him whenever the same may be prosecuted, and render himself amenable to any and all lawful orders and process in the premises, and not depart the said Court without leave first obtained and shall render himself amenable to any and all orders of this court and the United States Circuit Court of Appeals for the Ninth Circuit and United States Supreme Court or any of said courts, and shall appear for judgment and render himself in execution thereof, then this recognizance shall be void, otherwise, to remain in full effect and virtue.

JAMES B. SMITH,

GLOBE INDEMNITY COMPANY.

By JOY LICHTENSTEIN, (Seal)

Attorney in Fact.

Acknowledged before me the day and year first above written.

[Seal]

W. B. MALING,

United States Commissioner for the Northern District of California, at San Francisco. [2300]

APPROVED March 20, 1914.

M. T. DOOLING,

Judge.

Form and sufficiency of bond satisfactory.

M. I. SULLIVAN,

THEO. J. ROCHE,

Special Assistants U. S. Atty. General.

[Endorsed]: Filed March 20, 1914. Walter B. Maling, Clerk. [2301]

(Bond to Appear of Defendant F. C. Mills.)

United States of America,
Northern District of California,—ss.

BE IT REMEMBERED, that on this 20th day of March, in the year of our Lord one thousand nine hundred and fourteen before the undersigned, a United States Commissioner, duly appointed by the District Court of the United States for the Northern District of California, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the Acts of Congress, in that behalf, personally appeared F. C. Mills, as principal, and Globe Indemnity Company, as surety, and jointly and severally acknowledged themselves to be indebted to the United States of America in the sum of Seven Thousand Five Hundred (\$7,500.00) Dollars, separately to be levied and made out of their respective goods and chattels, lands and tenements, to the use of the said United States.

The conditions of the above recognizance is such, that whereas, an indictment has been found by the Grand Jury of the United States for the Northern District of California, and filed on the 27th day of February, A. D. 1913, in the District Court of the United States, for said Northern District of California, charging the said F. C. Mills with conspiring to defraud the United States Government, thereto-

fore committed at the District aforesaid, contrary to the form of the statute of the United States, in such case made and provided.

AND WHEREAS, a verdict of guilty on said indictment was rendered on February 18th, 1914, and on March 19th, 1914, the Court sentenced the said defendant F. C. Mills to imprisonment in the Penitentiary at San Quentin for the period of Eighteen months, [2302] and the said Court thereupon granted a stay of execution of judgment for thirty (30) days, and made an order admitting the said defendant F. C. Mills to bail in the sum of Seven Thousand Five Hundred (\$7,500.00) Dollars during the pendency of proceedings on appeal and during said stay of execution and during all other stays of execution of proceedings that may hereafter be granted.

AND WHEREAS, the said F. C. Mills has been required to give a recognizance, with sureties, in the sum of Seven Thousand Five Hundred (\$7,500.00) Dollars for his appearance.

NOW, THEREFORE, if the said F. C. Mills shall personally appear at the District Court of the United States, for the Northern District of California, to be holden at the courtroom of said Court, in the City of San Francisco, on the 18th day of April, A. D. 1914, at 10 o'clock in the forenoon on that day, and afterward whenever or wherever he may be required to answer the said indictment and said judgment and all matters and things that may be objected against him whenever the same may be prosecuted, and render himself amenable to any and all lawful orders and process in the premises, and not depart the said

Court without leave first obtained and shall render himself amenable to any and all orders of this court and the United States Circuit Court of Appeals for the Ninth Circuit and United States Supreme Court or any of said courts, and shall appear for judgment and render himself in execution thereof, then this recognizance shall be void, otherwise, to remain in full effect and virtue.

F. C. MILLS,

GLOBE INDEMNITY COMPANY.

By JOY LICHTENSTEIN, (Seal)

Attorney in Fact.

Acknowledged before me the day and year first above written.

[Seal]

W. B. MALING,

United States Commissioner.

For the Northern District of California, at San Francisco. [2303]

APPROVED March 20, 1914.

M. T. DOOLING,

Judge.

Form and sufficiency of Bond satisfactory.

M. I. SULLIVAN,

THEO. J. ROCHE,

Special Assistants U. S. Atty. General.

[Endorsed]: Filed March 20, 1914. Walter B. Maling, Clerk. [2304]

(Bond to Appear of Defendant E. H. Mayer.)

United States of America,

Northern District of California,—ss.

BE IT REMEMBERED, that on this 20th day of March, in the year of our Lord one thousand nine hundred and fourteen before the undersigned, a United States Commissioner, duly appointed by the District Court of the United States for the Northern District of California, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress, in that behalf, personally appeared E. H. Mayer, as principal, and Globe Indemnity Company, as surety, and jointly and severally acknowledged themselves to be indebted to the United States of America in the sum of Five Thousand (\$5,000.00) Dollars, separately to be levied and made out of their respective goods and chattels, lands and tenements, to the use of the said United States.

The conditions of the above recognizance is such, that, whereas, an indictment has been found by the Grand Jury of the United States for the Northern District of California, and filed on the 27th day of February, A. D. 1913, in the District Court of the United States, for said Northern District of California, charging the said E. H. Mayer with conspiring to defraud the United States Government, theretofore committed at the District aforesaid, contrary to the form of the statute of the United States, in

such case made and provided.

AND WHEREAS, a verdict of guilty on said indictment was rendered on February 18th, 1914, and on March 19th, 1914, the Court sentenced the said defendant E. H. Mayer to imprisonment in the [2305] Alameda County Jail for the period of one (1) year and the said Court thereupon granted a stay of execution of judgment for thirty (30) days, and made an order admitting the said defendant E. H. Mayer to bail in the sum of Five Thousand Dollars during the pendency of proceedings on appeal and during said stay of execution and during all other stays of execution of proceedings that may hereafter be granted.

AND WHEREAS, the said E. H. Mayer has been required to give a recognizance, with sureties, in the sum of Five Thousand (\$5,000.00) Dollars for his appearance.

NOW, THEREFORE, if the said E. H. Mayer shall personally appear at the District Court of the United States, for the Northern District of California, to be holden at the courtroom of said court, in the City of San Francisco, on the 18th day of April, A. D. 1914, at 10 o'clock in the forenoon of that day, and afterward whenever or wherever he may be required to answer the said indictment and said judgment and all matters and things that may be objected against him whenever the same may be prosecuted, and render himself amenable to any and all lawful orders and process in the premises, and not depart the said Court without leave first obtained and shall render himself amenable to any and all

orders of this court and the United States Circuit Court of Appeals for the Ninth Circuit and United States Supreme Court or any of said Courts, and shall appear for judgment and render himself in execution thereof, then this recognizance shall be void, otherwise, to remain in full effect and virtue.

EDWARD H. MAYER,

GLOBE INDEMNITY COMPANY.

By JOY LICHTENSTEIN, (Seal)

Attorney in Fact.

Acknowledged before me the day and year first above written.

[Seal]

W. B. MALING,

United States Commissioner.

For the Northern District of California, at San Francisco. [2306]

APPROVED March 20, 1914.

M. T. DOOLING,

Judge.

Form and sufficiency of bond satisfactory.

M. I. SULLIVAN,

THEO. J. ROCHE,

Special Assistants to U. S. Atty. General.

[Endorsed]: Filed March 20, 1914. Walter B. Maling, Clerk. [2307]

*In the District Court of the United States, Northern
District of California, First Division.*

No. 5433.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

Substitution of Attorneys.

We, the undersigned, James B. Smith, F. C. Mills and E. H. Mayer, and each of us, defendants in the above-entitled cause, hereby appoint Peter F. Dunne, Esq., and Stanley Moore, Esq., as and for our attorneys in said cause in the place and stead of Edward J. McCutchen, Esq., Warren Olney, Jr., Esq., Samuel Knight, Esq., Stanley Moore, Esq., and A. P. Black, Esq., our present attorneys of record in said cause.

Dated, San Francisco, California, October 29, 1914.

JAMES B. SMITH.

FRED. C. MILLS.

EDWARD H. MAYER. [2308]

We, the undersigned, and each of us, do hereby consent to the substitution of Peter F. Dunne, Esq. and Stanley Moore, Esq., as attorneys for the defendants, James B. Smith, F. C. Mills and E. H. Mayer, in the above-entitled cause in our place and stead.

Dated, San Francisco, California, October 30th,
1914.

EDWARD J. McCUTCHEN.

WARREN OLNEY, Jr.

SAMUEL KNIGHT.

A. P. BLACK.

STANLEY MOORE.

We, the undersigned, do hereby accept the foregoing appointment as attorneys for the aforementioned defendants, James B. Smith, F. C. Mills and E. H. Mayer in the above-entitled cause.

Dated, San Francisco, California, October 30th,
1914.

PETER F. DUNNE.

STANLEY MOORE.

[Endorsed]: Filed Oct. 30, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [2309]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5233.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SMITH et al.,

Defendants.

Stipulation and Order Providing That Certain Exhibits Hereinbelow Designated Shall be Printed in a Volume Separate from the Bill of Exceptions, Which Said Volume, However, Shall be Transmitted to the Circuit Court of Appeals as a Part of Said Bill of Exceptions.

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that the following exhibits, to wit:

U. S. Exhibits 124, 125 (Tables "A," "B," "C" and "D"), 130, 151, 126 (one sheet only, and to be so designated), 137, 150, 135, Defendants' Exhibit "KK," and Defendants' Exhibit introduced and received in evidence just prior to Defendants' Exhibit "SS," being barge table showing 4.99 per cent, as shown and referred to on page 1890 of Bill of Exceptions.

Also U. S. Exhibits Nos. 152, 153, 154 and 155; also complete copy of an entry including invoice and bill of lading; also drawback claim and affidavit unless already inserted at length in Bill of Exceptions, shall be printed in a volume separate from the Bill of Exceptions herein, but that said volume shall be regarded, as to all intents and purposes, an integral part of said Bill of Exceptions, with the same force and effect as if incorporated at large therein.

[2310]

Dated at San Francisco, California, this 19th day of January, 1915.

THEO. J. ROCHE,
Assistant to the Attorney General of the United
States.

PETER F. DUNNE,
STANLEY MOORE,
Attorneys for Defendants, James B. Smith, F. C.
Mills and E. H. Mayer.

Now, on this day, for good cause shown, and pursuant to the above and foregoing stipulation, it is ordered that the above designated exhibits shall be printed in a volume separate from the Bill of Exceptions and that said volume shall be transmitted to the Circuit Court of Appeals as in all respects a part of said Bill of Exceptions, with the same force and effect as if incorporated at large therein; and the Clerk of the above-entitled Court is hereby directed and ordered to so print and transmit said exhibits.

Dated at San Francisco, California, this 19th day of January, 1915.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Jan. 19, 1915. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [2311]

**Certificate of Clerk U. S. District Court to
Transcript of Record on Writ of Error.**

I, W. B. Maling, Clerk of the District Court of the United States of America for the Northern District of California, do hereby certify that the foregoing

2311 pages, numbered from 1 to 2311, inclusive (in five volumes) contains a full, true and correct transcript of certain records and proceedings, in the case of the United States of America vs. James B. Smith et al., numbered 5,233, as the same now remain on file and of record in the office of the Clerk of said District Court; said transcript having been prepared pursuant to and in accordance with the "Praecipe" (a copy of which is embodied in this transcript), and the instructions of the Attorneys for Defendants and Appellants herein.

I further certify that the costs for preparing and certifying the foregoing transcript on Writ of Error is the sum of One Thousand Four Hundred Forty-seven Dollars and Ten Cents (\$1,447.10), and that the same has been paid to me by the attorneys for the appellants herein.

Annexed hereto is the Original Citation on Writ of Error and the Original Writ of Error with the return of the said District Court to said Writ of Error attached thereto.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 27th day of February, A. D. 1915.

W. B. MALING,
Clerk.

By C. W. Calbreath,
Deputy Clerk.

[Internal Revenue Stamp, Canceled February 26, 1915. C. W. C.] [2312]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. —.

JAMES B. SMITH, F. C. MILLS and E. H.
MAYER,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Writ of Error (Original).

United States of America,—ss.

The President of the United States of America, to
the Honorable, the Judges of the District Court
of the United States, for the Northern District
of California, Greeting:

BECAUSE, in the record and proceedings, as also
in the rendition of the judgment of a plea which is
in the said District Court, before the Honorable
Maurice T. Dooling, one of you, between the United
States of America, plaintiff and defendant in error,
and James B. Smith, F. C. Mills and E. H. Mayer,
defendants and plaintiffs in error, a manifest error
hath happened, to the great damage of the said plain-
tiffs in error, and each of them, as by their complaint
appears:

We, being willing that error, if any hath been,
should be duly corrected, and full and speedy justice
done to the [2313] parties aforesaid in this be-
half, do command you, if judgment be therein given,

that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, this 18th day of May, in the year of our Lord One Thousand, Nine Hundred and Fourteen.

[Seal]

W. B. MALING,
Clerk U. S. District Court.
By C. W. Calbreath,
Deputy Clerk.

Allowed by:

M. T. DOOLING,
U. S. Dist. Judge. [2314]

Service of the above Writ of Error made this 18th day of May, in the year of our Lord one thousand nine hundred and fourteen, upon the District Court of the United States, for the Northern District of California, by filing with me as Clerk of said Court,

a duly certified copy of said Writ of Error.

[Seal]

W. B. MALING,

Clerk of the District Court of the United States, for
the Northern District of California.

By C. W. Calbreath,

Deputy Clerk. [2315]

[Endorsed]: No. 5233. In the United States Circuit Court of Appeals, for the Ninth Circuit. James B. Smith, F. C. Mills and E. H. Mayer, Plaintiffs in Error, vs. United States of America, Defendant in Error. Writ of Error. Filed May 18, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [2316]

Return to Writ of Error.

The Answer of the Judges of the District Court of the United States of America, for the Northern District of California, to the within Writ of Error.

As within we are commanded, we certify under the seal of our said District Court, in a certain schedule to this Writ annexed, the record and all proceedings of the plaint whereof mention is within made, with all things touching the same, to the United States Circuit Court of Appeals, for the Ninth Circuit, within mentioned, at the day and place within contained.

We further certify that a copy of this Writ was on the 18th day of May, A. D. 1914, duly lodged in

the case in this Court for the within-named defendants in Error.

By the Court:

[Seal]

W. B. MALING,

Clerk United States District Court, Northern District of California.

By C. W. Calbreath,
Deputy Clerk.

[Internal Revenue Stamp, Canceled February 26,
1915. C. W. C.] [2317]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. —.

JAMES B. SMITH, F. C. MILLS and E. H.
MAYER,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Citation on Writ of Error (Original).

United States of America,—ss.

The President of the United States of America, to
the United States of America, and to Matthew
I. Sullivan, Esquire, and Theodore J. Roche, Es-
quire, Special Assistants to the Attorney-Gen-
eral of the United States, Greeting:

You are hereby cited and admonished to be and ap-
pear at a United States Circuit Court of Appeals

for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the clerk's office of the United States District Court for the Northern District of California, wherein James B. Smith, F. C. Mills and E. H. Mayer are plaintiffs in error, and the United States of America is defendant in error, to show cause, if any there be, why the judgment [2318] rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, this 18th day of May in the year of our Lord one thousand nine hundred and fourteen.

M. T. DOOLING,

United States District Judge.

[Seal]

Attest: W. B. MALING,

Clerk.

By C. W. Calbreath,

Deputy Clerk.

Due and legal service of the above and foregoing citation, and receipt of a copy thereof, is hereby accepted and admitted, in the City and County of San Francisco, State of California, this 18th day of May, A. D. 1914.

MATT I. SULLIVAN,

THEO. J. ROCHE,

Special Assistants to the Attorney General of the
United States. [2319]

[Endorsed]: No. 5233. U. S. District Court, Northern District of California, First Division. James B. Smith, F. C. Mills and E. H. Mayer, Plaintiffs in Error, vs. United States of America, Defendant in Error. Citation on Writ of Error. Filed May 18, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [2320]

[Endorsed]: No. 2576. United States Circuit Court of Appeals for the Ninth Circuit. James B. Smith, F. C. Mills and E. H. Mayer, Plaintiffs in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Northern District of California, First Division. Filed February 27, 1915.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

JAMES B. SMITH, F. C. MILLS and E. H.
MAYER,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

**Stipulation Extending Time to [July 17, 1914 to]
File Record.**

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that the time of the Plaintiffs in Error herein, James B. Smith, F. C. Mills and E. H. Mayer for printing the record and filing and docketing this cause on appeal in the United States Circuit Court of Appeals for the Ninth Circuit, be and the same is hereby extended to and including the 17th day of July, 1914.

Dated: San Francisco, June 15, 1914.

M. I. SULLIVAN,
THEO. J. ROCHE,

Special Assistants to the Attorney General of the
United States.

EDW'D J. McCUTCHEN,
WARREN OLNEY, Jr.,
SAM'L KNIGHT,
STANLEY MOORE,
A. P. BLACK,

Attorneys for Plaintiffs in Error, James B. Smith,
F. C. Mills and E. H. Mayer.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

JAMES B. SMITH, F. C. MILLS and E. H.
MAYER,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendants in Error.

**Order Enlarging Time to [July 17, 1914, to] File
Record.**

Now, at this day, for good cause shown and pursuant to the foregoing stipulation,

IT IS HEREBY ORDERED that the time of the Plaintiffs in Error herein, James B. Smith, F. C. Mills and E. H. Mayer, for printing the record and filing and docketing this cause on appeal in the United States Circuit Court of Appeals for the Ninth Circuit, be and the same is hereby enlarged and extended to and including the 17th day of July, 1914.

Dated: San Francisco, June 16, 1914.

M. T. DOOLING,

Judge.

[Endorsed]: In the United States Circuit Court of Appeals for the Ninth Circuit. James B. Smith et al., Plaintiffs in Error, vs. United States of America, Defendant in Error. Stipulation and Order Extending Time to File Record. Filed Jun. 16, 1914. F. D. Monckton, Clerk.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

JAMES B. SMITH, F. C. MILLS and E. H.
MAYER,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

**Stipulation Enlarging Time of Plaintiffs in Error
to [September 15, 1914, to] File Record and
Docket Case.**

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that the time of the plaintiffs in error herein, James B. Smith, F. C. Mills and E. H. Mayer, for filing the record hereof and docketing this case on writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to the District Court of the United States for the Northern District of California, may be enlarged to and including the 15th day of September, 1914.

Dated, San Francisco, California, August 12, 1914.

MATT. I. SULLIVAN,
THEO. J. ROCHE,

Assistants to the Attorney General of the United
States.

EDW'D J. McCUTCHEN,
WARREN OLNEY, Jr.,
SAMUEL KNIGHT,
STANLEY MOORE,
A. P. BLACK,

Attorneys for Said Plaintiffs in Error.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

JAMES B. SMITH, F. C. MILLS and E. H.
MAYER,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

**Order Enlarging Time of Plaintiffs in Error to
[September 15, 1914, to] File Record and
Docket Case.**

Now, at this day, for good cause shown and pursuant to the foregoing stipulation,—

IT IS HEREBY ORDERED that the time of the plaintiffs in error herein, James B. Smith, F. C. Mills and E. H. Mayer, for filing the record hereof and docketing this case on writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to the District Court of the United States for the Northern District of California, be and the same is hereby enlarged to and including the 15th day of September, 1914.

Dated, San Francisco, California, August 14, 1914.

WM. W. MORROW,
Circuit Judge.

[Endorsed]: In the U. S. Circuit Court of Appeals, for the Ninth Circuit. James B. Smith, F. C. Mills and E. H. Mayer, Plaintiffs in Error, vs. United States of America, Defendant in Error. Stipulation and Order Enlarging Time of Plaintiffs in Error to File Record and Docket Case. Filed Aug. 14, 1914. F. D. Monckton, Clerk.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

JAMES B. SMITH, F. C. MILLS and E. H.
MAYER,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

**Stipulation Enlarging Time of Plaintiffs in Error to
[August 16, 1914, to] File Record and Docket
Case.**

IT IS HEREBY STIPULATED AND AGREED
by and between the respective parties hereto that the
time of the plaintiffs in error herein, James B.
Smith, F. C. Mills and E. H. Mayer, for printing
and filing the record hereof and docketing this case
on writ of error from the United States Circuit
Court of Appeals for the Ninth Circuit to the Dis-
trict Court of the United States for the Northern
District of California, may be enlarged to and in-
cluding the 16th day of August, 1914.

Dated, San Francisco, July 16, 1914.

MATT. I. SULLIVAN,
THEODORE J. ROCHE,

Assistants to the Attorney General of the United
States.

EDW'D J. McCUTCHEN,
WARREN OLNEY, Jr.,
SAMUEL KNIGHT,
STANLEY MOORE,
A. P. BLACK,

Attorneys for Said Plaintiffs in Error.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

JAMES B. SMITH, F. C. MILLS and E. H.
MAYER,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

**Order Enlarging Time of Plaintiffs in Error to
[August 16, 1914, to] File Record and Docket
Case.**

Now, at this day, for good cause shown and pursuant to the foregoing stipulation,—

IT IS HEREBY ORDERED that the time of the plaintiffs in error herein, James B. Smith, F. C. Mills and E. H. Mayer, for printing and filing the record hereof and docketing this case on writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to the District Court of the United States for the Northern District of California, be and the same is hereby enlarged to and including the 16th day of August, 1914.

Dated, San Francisco, July 17th, 1914.

W. W. MORROW,

Circuit Judge.

[Endorsed]: United States Circuit Court of Appeals for the Ninth Circuit. James B. Smith, F. C. Mills and E. H. Mayer, Plaintiffs in Error, vs. United States of America, Defendant in Error. Stipulation and Order Enlarging Time of Plaintiffs

in Error to File Record and Docket Case. Filed Jul. 17, 1914. F. D. Monckton, Clerk.

No. 2576. United States Circuit Court of Appeals for the Ninth Circuit. Three Orders Under Rule 16 Enlarging Time to File Record Thereof and to Docket Case. Refiled Feb. 27, 1915. F. D. Monckton, Clerk.

United States
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

JAMES B. SMITH, F. C. MILLS and E. H.
MAYER,

Plaintiffs in Error,
vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

(EXHIBITS)

VOLUME VIII.

(Pages 2671 to 2920, Inclusive.)

Upon Writ of Error to the United States District Court of the
Northern District of California, First Division.

Filed

JUL 1 - 1915

United States
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

JAMES B. SMITH, F. C. MILLS and E. H.
MAYER,

Plaintiffs in Error,
vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

(EXHIBITS)

VOLUME VIII.
(Pages 2671 to 2920, Inclusive.)

Upon Writ of Error to the United States District Court of the
Northern District of California, First Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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**[Designation of Defendant in Error as to Printing
of Additional Exhibits.]**

*In the United States Circuit Court of Appeals, Ninth
Circuit.*

**JAMES B. SMITH, FREDERICK C. MILLS and
E. H. MAYER,**

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

To Frank D. Monckton, Esq., Clerk of the Above-
entitled Court:

The United States of America, defendant in error
in the above-entitled action, hereby designates the
following additional portions of the record in the
above-entitled action, which it desires and requests
to have printed, viz.:

1. That certain exhibit entitled "Statement of
cargoes of coal received from Newcastle, Australia,
1903-1907."

2. That certain exhibit entitled "Partial list of
shortages in cargoes of coal imported by Western
Fuel Company, 1906-1907."

3. That certain exhibit designated "United
States' Exhibit No. 128."

Dated: March 26, 1915.

M. I. SULLIVAN,

THEO. J. ROCHE,

**Special Assistants to the United States Attorney
General,**

Attorneys for Defendant in Error.

Receipt of a copy of the within Instructions is hereby admitted this 26th day of March, 1915.

STANLEY MOORE,

P. F. DUNNE,

Plaintiffs in Error.

[Endorsed]: No. 2576. In the United States Circuit Court of Appeals, Ninth Circuit. James B. Smith, Frederick C. Mills and E. H. Mayer, Plaintiffs in Error, vs. United States of America, Defendant in Error. Instructions to Clerk as to Printing of Additional Exhibits. Filed Mar. 26, 1915. F. D. Monckton, Clerk.

**[U S. Exhibit No. 124—Daily Reports of Coal Discharged from "Titania," and
Summary for April, 1911.]**

WESTERN FUEL CO.

DAILY REPORT.

N. Wellington Coal Discharged ex Titania

	Tons	Lbs.		April 20th, 1911...
				Tons Lbs.
No. 1 Hoist { Clean	211	1500	To Wharf Bunker	186 1450
Average			" Yard	
Screenings			" Bge Theobald	725 1300
No. 2 Hoist.....	268	1340	Offshore Bunkers	40 250
No. 3 Hoist.....	236	1370	"	
No. 4 Hoist.....	235	1030	"	
Melrose Hoist	952	760	"	
Total	952	760	Total.....	952 760

Invoice 5575

Discharged 952/760

Balance 4622/1480

Hehn Weigher

WESTERN FUEL CO.

DISCHARGING REPORT.

Vessel "Titania"		Mission St. Wharf.		San Francisco, April 20th, 1911. N. Wellington Coal.					
Tower No.	Foreman	Engineer	Kind of Coal	Hours	No. of Tubs	Tons Hoisted	Average per Tub	Labor Cost	Average per Ton
1	Kramer	Bramley	N. Well.	80		211 1500		43	20+
2	Carlson	Strelow	"	80		268 1340		43	16+
3	Fegroid	Green	"	75		236 1370		40 35	17+
4	Usdom	Smith	"	80		235 1030		43	17+
"Melrose"									
Total.....						952 760		\$169 35	17½+
Remarks.....									
									E. Mayer.

E. Mayer.

WESTERN FUEL CO.

N. Wellington Coal Discharged ex "Titania"

DAILY REPORT.

	Tons	Lbs.	To Wharf Bunker	April 21st, 1911.
			" Yard	Tons Lbs.
No. 1 Hoist { Clean	296	470	" " " "	823 430
{ Average			Bge Theobald	52 480
{ Screenings			" Nanaimo	528 390
No. 2 Hoist.	454	140	" " " "	
No. 3 Hoist.	328	1540	" " " "	
No. 4 Hoist.	324	1390	" " " "	
Melrose Hoist.			" " " "	
Total	1403	1300	Total	1403 1300

Invoice 5575
 Discharged 2355/2060
 Balance 3219/180

Hahn Weigher

WESTERN FUEL CO.

DISCHARGING REPORT.

[illegible]

WESTERN FUEL CO.

N. Wellington Coal Discharged ex "Titania"

DAILY REPORT.

	Tons	Lbs.		April 22d, 1911.
				Tons Lbs.
No. 1 Hoist { Clean	342	1270	To Wharf Bunker	486 1610
Average			" Yard	
Screenings			" Bge Nanaimo	241 1180
No. 2 Hoist.	422	1260	" Comanche	695 1200
No. 3 Hoist.	341	1290	"	
No. 4 Hoist.	317	170	"	
Melrose Hoist.			"	
Total	1423	1750	Total	1423 1750

Invoice 5575

Discharged 3779/1570

Balance 1795/670

Hahn Weigher

WESTERN FUEL CO.

DISCHARGING REPORT.

Vessel "Titania"

Mission St. Wharf.

San Francisco, April 22d, 1911.
N. Wellington Coal.

Tower No.	Foreman	Engineer	Kind of Coal	Hours	No. of Tubs	Tons Hoisted	Average per Tub	Labor Cost	Average per Ton
1	Kramer	Bramley	N. Well.	90		342		48 35	14+
"	Usdom	Smith	"	10					
2	Carlson	Strelow	"	90		422		53 70	12½+
3	Fegroid	Green	"	90		341		48 35	14+
4	Usdom	Smith	"	80		317		43	13½+
"Melrose"									

Total.....

1423 1750

\$193 40

13½+

Remarks.....

E. Mayer.

WESTERN FUEL CO.

N. Wellington Coal Discharged ex "Titania"

DAILY REPORT.

		Tons	Lbs.			April 24th, 1911.
						Tons
						Lbs.
No. 1 Hoist	{ Clean	.....		To Wharf Bunker	.....	1192
	{ Average	..... 314	1830	" Yard	.....	2140
	{ Screenings	.....		" Bge Comanche	.....	117
No. 2 Hoist.	.....	404	1790	" Offshore Bunkers	.....	25
No. 3 Hoist.	.....	326	320	"	.....	1420
No. 4 Hoist.	.....	290	1280	"	.....	1650
Melrose Hoist.	.....			"	.....
Total	.....	1336	740	Total	.....

.....
.....
.....
Invoice 5575
Discharged 5116/70
Balance 458/2170

Hahn Weigher

WESTERN FUEL CO.

DISCHARGING REPORT.

Vessel "Titania"		Mission St. Wharf.		San Francisco, April 24th, 1911.			
				N. Wellington Coal.		Average	
Tower No.	Foreman	Engineer	Kind of Coal	Hours	No. of Tubs	Tons Hoisted	Average per Tub
1	Kramer	Talford	N. Well.	85		314	1830
"	Usdom	Smith	"	10		404	1790
2	Carlson	Strelow	"	90		326	320
3	Pegroid	Green	"	90		290	1280
4	Usdom	Smith	"	80			
"Melrose"							
Total.						1336	740
Remarks.						\$191 05	14+

E. Mayer.

WESTERN FUEL CO.

N. Wellington Coal Discharged ex "Titania"

DAILY REPORT.

	Tons	Lbs.		To Wharf Bunker	April 25th, 1911.
				" Yard	Tons
				"	Lbs.
No. 1 Hoist { Clean				Offshore Bunkers	98
Average	73	1080			1370
Screenings					
No. 2 Hoist	129	380			251
No. 3 Hoist	109	1760			1260
No. 4 Hoist	37	1650			
Melrose Hoist					
Total	350	390		Total	350
					390

Invoice 5575
Discharged 5466/460
Short 108/1780

Hahn Weigher

WESTERN FUEL CO.

DISCHARGING REPORT.

Mission St. Wharf.

San Francisco, April 25th, 1911.
N. Wellington Coal.

Vessel "Titania"

Foreman	Engineer	Kind of Coal	Hours	No. of	Tons Hoisted	Average	Labor Cost	Average
Tower No. 1	Talford	N. Well.	15	Tubs	73 1080	per Tub	8	per Ton
" 2	Strelow	"	35		129 380		18 70	10+
" 3	Green	"	35		109 1760		18 70	14+
" 4	Bramley	"	20		37 1650		10 70	17+

"Melrose"

Total.....	350	390	\$56 10	16+
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Remarks.....	E. Mayer.
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EASTERN FUEL CO.

Summary of N. Wellington Coal Discharged ex "Titanica"

Date	No. 1, Hoist		No. 2, Hoist		No. 3, Hoist		No. 4, Hoist		"Melrose" Hoist		Total		Bunker		Yard		Off Shore		Remarks.
	Tons	Pounds	Tons	Pounds	Tons	Pounds	Tons	Pounds	Tons	Pounds	Tons	Pounds	Tons	Pounds	Tons	Pounds	Tons	Pounds	
April 20	211	1500	268	1340	236	1370	235	1030			952	760	186	1450			725	1300	Bge Theobald
‘ 21	296	470	454	140	328	1540	324	1390			1403	1300	823	430			40	250	Offshore Bunkers
‘ 22	342	1270	422	1260	341	1290	317	170			1423	1750	486	1610			52	480	Bge Theobald
‘ 24	314	1830	404	1790	326	320	290	1280			1336	740	1192	2150			528	390	“ Nananimo
‘ 25	73	1080	129	380	109	1760	37	1650			350	390	98	1370			241	1180	“ do
																	695	1200	“ Comanche
																	117	1420	do
																	25	1650	Offshore Bunkers
																	251	1260	do
11																			

Date	No. 1 HATCH		No. 2 HATCH		No. 3 HATCH		No. 4 HATCH		TOTAL	
	Vessels	Draft	For'd	Aft					Finished	Sailed
voice	5575								1030	A. M.
discharged	5466/460									
port	108/1780									
									Hahn	Weigher
									E. M.	

[Endorsed]: No. 5233. U. S. v. Howard et al. U. S. Exhibit No. 124. Francis Krull, Deputy Clerk.

No. 2576. U. S. Circuit Court of Appeals for the Ninth Circuit. U. S. Exhibit 124. Received and Filed March 4, 1915. F. D. Monck-
 Clerk.

[U. S. Exhibit No. 125—Table “A”—Statement Showing Coal on Hand, April 1, 1906, and Receipts of Coal from April 1, 1906, to December 31, 1912, and Summary.]

EXHIBIT “A.”

STATEMENT SHOWING COAL ON HAND
APRIL 1, 1906, AND THE RECEIPTS OF
COAL FROM ALL SOURCES BY THE
WESTERN FUEL COMPANY FROM APRIL
1, 1906, TO DECEMBER 31, 1912.

[Endorsed]: No. 5233. U. S. v. Howard et al.
U. S. Exhibit No. 125—Table “A.” Francis Krull.

No. 2576. U. S. Circuit Court of Appeals for
the Ninth Circuit. U. S. Exhibit 125—Table “A.”
Received and filed March 4, 1915. F. D. Monekton,
Clerk.

2687

May

[U. S. Exhibit No. 125—Table “A”—Statement Showing Coal on Hand, April 1, 1906, and Receipts of Coal from April 1, 1906, to December 31, 1912, and Summary.]

EXHIBIT “A.”

STATEMENT SHOWING COAL ON HAND
APRIL 1, 1906, AND THE RECEIPTS OF
COAL FROM ALL SOURCES BY THE
WESTERN FUEL COMPANY FROM APRIL
1, 1906, TO DECEMBER 31, 1912.

[Endorsed]: No. 5233. U. S. v. Howard et al.
U. S. Exhibit No. 125—Table “A.” Francis Krull.

No. 2576. U. S. Circuit Court of Appeals for
the Ninth Circuit. U. S. Exhibit 125—Table “A.”
Received and filed March 4, 1915. F. D. Monekton,
Clerk.

STATEMENT SHOWING COAL ON HAND APRIL 1, 1906, AND THE RECEIPTS OF COAL FROM ALL SOURCES
BY THE WESTERN FUEL COMPANY FROM APRIL 1, 1906, TO DECEMBER 31, 1912.

Entry No.	Vessel.	Invoice Weight Tons	Weight Ascertained lbs.	Weight Tons	Short Tons	Over Tons	Anthracite Tons
Balance Apr. 1, 1906		25258	25258				
1906.							
April							
4369	A & B Reidar	5801	5811	210		10	210
4654	Titania	5588	5748	880		160	880
5296	Reidar	5712	5715	1130		3	1130
4911	Terje Viken	5835	(2340 3533)	1811 1814		39	1385
5361	Titania	5708	5698	2120	9	120	
	Bristol Pkg. Co.	182	182	2160			
	Anthracite Coal Co.	46	46	1620			1620
0.17	Wellington	2210	2268	2160		58	2160
	Anthracite Coal Co.	5	5	1940			5
	Central Coal Co.	2	2	1830			1940
	Total	56350	56613	1995	9	272	1285
May							
5634	Terje Viken	5710	5544	1080	165	1160	
5633	Tellus	2605	2994	760			760
6597	Terje Viken	5774	5689	840	84	1400	
S D	Reidar	5810	5668	770	141	1470	
6350	Titania	5700	5747	808		47	808
6545	Tellus	3588	3687	1590		99	1590
5736	Blackheath	4033	4010	1890	22	350	
Oakland	Wellington	2265	2243	220	16	2020	
	Pacific Coast Coal Co.		118	730			
	Pacific Coast Coal Co.	487	487	910			
	Pacific Coast Coal Co.	11	1330	1330			1330
	Anthracite Coal Co.	6	6	40			40
	Total	36108	36213	2008	430	536	918
						17	1370

Entry No.	Vessel	Invoice Weight Tons	Invoice Weight Lbs.	Ascertained Weight Tons	Ascertained Weight Lbs.	Short Tons	Short Lbs.	Over Tons	Over Lbs.	Anthracite Tons	Anthracite Lbs.
1906.											
June											
7113	Titania	5760		5718	1480	41	760				
7576	Terje Viken	5796		5770	30	25	2210				
7858	Titania	(5323)		5308	1970)	23	2180				
		(467		457	330)						
	Occidental Hotel	48	1877	48	1877						
7805	Tonawanda	3000		3000						8	
	Anthracite Coal Co.	8		8							
O.42	Wellington	2253		2276	1660	23	1660			5	2080
	Anthracite Coal Co.	5	2080	5	2080						
	Pacific Coast Co.	193	610	193	610						
	Pacific Coast Co.	4	1900	4	1900						
	Total	22859	1987	22792	737	91	670	23	1660	13	2080
July											
8409	Terje Viken	5743		5603	730	139	1510				
9527	Titania	5694		5680	470	13	1770				
8743	Titania	5655		5554	880	100	1360				
9350	Terje Viken	5700		5515	790	184	1450			21	1710
	Anthracite Coal Co.	21	1710	21	1710						
	Wellington	2270		2284	860	14	860			6	1960
O.72	Anthracite Coal Co.	6	1960	6	1960						
	Pacific Coast Coal Co.	3	1680	3	1680						
	Total	25094	870	24670	120	438	1610	14	860	28	1430

Entry No.	Vessel	Invoice Weight Tons	Ascertained Weight Tons	Short Tons	Over Tons	Anthracite Tons
		Lbs.	Lbs.	Lbs.	Lbs.	Lbs.
1006						
August						
10587	Titanic	(2900)	2845	109	228	
		(2912)	2857			
10249	Terje Viken	5685	5572	112	860	
	George Fritch	38	38			
	Pacific Coast Coal Co.	530	530			
	Anthracite Coal Co.	500	500			
	J. & A. Brown	43	43			43
	Anthracite Coal Co.	1591	1591			
	F. P. Grady & Co.	15	15			15
		3	3			
	Total	13190	12969	221	1088	1730
September						
11763	Titanic	5747	5678	68	1132	
12586	Terje Viken	5861	5619	241	1040	
11272	Black Heath	5808	5758	49	1290	
12693	Pacific Coast Coal Co.	3506	3499	6	1480	
	Pacific Coast Coal Co.	100	100			100
	Anthracite Coal Co.	4	4			4
	Anthracite Coal Co.	1	1			1
	Anthracite Coal Co.	52	52			52
	Breen	1509	1509			
	Total	22590	22223	366	462	158
October						
12891	Tellus	3881	3642	175	500	
13914	Tordenskjold	5910	5727	162	1810	
13651	Terje Viken	5853	5809	43	1500	
S. D.	Titanic	5650	5563	86	230	
14105	Blackheath	3665	3803			
	Pat Kearney	6	6			
	Forward	24902	24653	487	1800	1640

Entry No.	Vessel	Invoice Weight Tons	Invoice Weight Lbs.	Ascertained Weight Tons	Ascertained Weight Lbs.	Short Tons	Short Lbs.	Over Tons	Over Lbs.	Anthracite Tons	Anthracite Lbs.
1906.	October, Cent'd Brought forward	24902	210	24653	50	487	1800	138	1640		
	Anthracite Coal Co.	224	1755	224	1755					224	1755
	Hind, Rolph & Co.	481	2160	481	2160						
	Pacific Coast Co.	1616	1401	1616	1401						
	George Carter	3	2100	3	2100						
	Pacific Coast Co.	5	20	5	20					5	20
	Pacific Coast Co.	25	1700	25	1700					25	1700
	Pacific Coast Co.	1376	1020	1376	1020						
	Anthracite Coal Co.	385	1760	385	1760					385	1760
	Anthracite Coal Co.	278	2050	278	2050					278	2050
	Pacific Coast Co.	2337	1700	2337	1700						
	Central Coal Co.	26	1760	26	1760						
	Total	31665	1956	31316	1796	487	1800	138	1640	920	565
November											
14490	Tellus	3860		3785	1790	74	450				
15211	Tordenskjold	5782		5693	560	88	1680				
	Central Coal Co.		1120		1120						
14700	Titania	5705		5665	2220	39	20				
	Stafford & Co.	4	1360	4	1360						
	Stafford & Co.	2	1110	2	1110						
	G. Graham		1120		1120						
	Brown & Co.	2	1955	2	1955						
	Anthracite Coal Co.	335	1030	335	1030					335	1030
	Pacific Coast Co.	75	1400	75	1400						
	Central Coal Co.	7	2040	7	2040						
	Anthracite Coal Co.	410	690	410	690					410	690
	Tellus	3727		3645	600	81	1640				
15529											
	Total	19918	625	19634	1315	283	1550			745	1720

Entry No.	Vessel	Invoice Weight Tons Lbs.	Ascertained Weight Tons Lbs.	Short Tons Lbs.	Over Tons Lbs.	Anthracite Tons Lbs.
1906.						
December						
16326	Sheila	6061	5939	121	2030	
16626	Tordenskjold	5770	5803		33	1270
15988	Titania	5665	5620	44	880	
16539	Hercules	6396	6243	152	1954	
16828	Tellus	3554	3638		84	654
17215	Titania	5456	5608	47	70	
	Suveric	25	25			
	W. G. Stafford	2	2			
	J. J. Moore	1666	1666			
	Central Coal Co.	5	5			
	Pacific Coast Co.	4	4			500
	Anthracite Coal Co.	1476	1476			1476
	Anthracite Coal Co.	410	410			410
	Central Coal Co.	197	197			
	Total	36688	36440	366	117	1891
				454	1924	305

Entry No.	Vessel	Invoice Weight Tons	Invoice Weight Lbs.	Ascertained Weight Tons	Ascertained Weight Lbs.	Short Tons	Short Lbs.	Over Tons	Over Lbs.	Anthracite Tons	Anthracite Lbs.
1907											
January											
452	Sheila	5591		5471	1430	119	810				
979	Tellus	3752		3644	2220	107	20				
1538	Wellington	2312		2237	1140	74	1100				
S. D.	Tordenskjold	5907		5622	2090	284	150				
1425	Titania	5542		5440	1110	101	1130				
	R. S. Meacham		1120		1120						
	Central Coal Co.		2000		2000						
	Central Coal Co.		500		500						
	Thode Fagelund	3920	1000	3920	1000						
	African Monarch	3128	1780	3128	1780						
	Central Coal Co.		1100		1100						
	Pacific Coast Coal Co.	14	50	14	50						
	Central Coal Co.	6	1120	6	1120						
	Pacific Coast Coal Co.	31	1230	31	1230						
	Anthracite Coal Co.	953	2120	953	2120					953	2120
	Union Pacific Salt Co.	3	530	3	530						
	Anthracite Coal Co.	763	25	763	25					763	25
	Pacific Coast Coal Co.	11	1820	11	1820						
	Total	31939	955	31252	2225	686	970			1716	2145

Entry No.	Vessel	Invoice Weight		Ascertained Weight		Short		Over		Anthracite	
		Tons	Lbs.	Tons	Lbs.	Tons	Lbs.	Tons	Lbs.	Tons	Lbs.
1907											
February											
2266	Sheila	5714		5653	2160	60	80				
3296	Tordenskjold	5907		5630	400	276	1840				
2417	Tellus	3531		3578	1220			47	1220		
2070	Condor	4234		4235	1820			1	1820		
2334	Boverie	5689		5828	960			139	960		
	Aymeric	2658	900	2658	900						
	Foreric	2229	1760	2229	1760						
	Central Coal Co.	4	1020	4	1020						
	Thode Fagelund	140	770	140	770						
	Central Coal Co.	7	1120	7	1120						
2660	Hazel Dollar	2940		2730	1067	209	1173				
	Anthracite Coal Co.	152	580	152	580					152	580
3257	Shibetoro Maru	3500		3419	2020	80	220				
	Anthracite Coal Co.	10	1190	10	1190					10	1190
	Total	36718	620	36280	1307	626	1073	188	1760	162	1770

Entry No.	Vessel	Invoice Weight Tons	Weight Lbs.	Ascertained Weight Tons	Weight Lbs.	Short Tons	Short Lbs.	Over Tons	Over Lbs.	Anthracite Tons	Anthracite Lbs.
1907											
March											
4256	Sheila	5760		5621	930	138	1310				
4729	Tellus	3529		3494	1880	34	360				
	Central Coal Co.	1	1760	1	1760						
	A/c Error	1	1760	1	1760						
	California Sugar Refinery	993	335	993	335						
S O	Titania	5621		5392	2140	228	100				
3516	Tellus	3528		3487	1970	40	270				
4473	Tordenskjold	5678		5744	260			66	260		
3220	Como	5866		5926	1724			60	1724		
	Drumcliff	959	2060	959	2060						
3585	Tiberia	5682		5690	1390			8	1390		
	Central Coal Co.		2000								
4024	Central Coal Co.	14		14							
4017	Bessie Dollar	4200		4018	673	181	1567				
	Jethon	5900		5662	850	237	1390				
	Anthracite Coal Co	106	2170	106	2170					106	2170
	Western Fuel Co	5	280	5	280						
	F. W. Cousins	1	1520	1	1520						
	Western Fuel Co.	2	1860	2	1860						
	Anthracite Coal Co.	19	2220	19	2220					19	2220
3552	Wellington	2313		2265	1670	47	570				
	Total	50185	285	49413	332	907	1087	135	1134	126	2150

Entry No.	Vessel	Invoice Weight Tons	Invoice Weight Lbs.	Ascertained Weight Tons	Ascertained Weight Lbs.	Short Tons	Short Lbs.	Over Tons	Over Lbs.	Anthracite Tons	Anthracite Lbs.
1907											
April											
4854	Wellington	2318		2293	1500	24	740				
5801	Tordenskjold	5869		5570	650	298	1590				
6090	Wellington	2358		2286	560	71	1680				
4853	Titania	5621		5597	2220	23	20				
5809	Tellus	3689		3623	680	65	1560				
S. D.	Shiela	5726	1560	5726	1560						
4962	Irish Monarch	5726		5726	1160			102	1160		
5123	Norman Isles	4694		4796	2120			103	2120		
	Bromley	2606	80	2606	80					10	1650
	Anthracite Coal Co.	10	1650	10	1650						
	Total	38618	1050	38238	980	483	1110	103	1040	10	1650
May											
6774	Titania	(3119 (2629		3082 2674	2150) 410)			9	320		
7178	Tellus	3621		3576	1030	44	1210				
7373	Tordenskjold	5723		5633	1510	89	730				
8267	Hornelen	5027		5002	850	24	1390				
	Yard	1		1							
	St. Helena	2017	910	2017	910						
6473	Antiope	2036		2036	410				410		
	Lord Templeton	1024	110	1024	110						
	Anthracite Coal Co.	1120	1120	1120	1120					3	1120
	Anthracite Coal Co.	3	1770	3	1770					3	1770
	Total	25201	1670	25052	1310	158	1090	9	730	4	650

Entry No.	Vessel	Invoice Weight Tons	Invoice Weight Lbs.	Ascertained Weight Tons	Ascertained Weight Lbs.	Short Tons	Short Lbs.	Over Tons	Over Lbs.	Anthracite Tons	Anthracite Lbs.
1907.											
June.											
8988	Tordenskjold	(2971		2970	1760		480				
		2632		2632							
9496	Hornelen	5975		5979	1780	4	1780				
	Germanicus	2169	830	2169	830						
8544	Arrow	4890		4903	350	13	350				
9236	Cape Breton	3904	1880	3904	1880						
	Central Coal Co.	5		5						50	
	Pacific Coast Co.	1		1							
	Anthracite Coal Co.	50	980	50	980					12	980
	Anthracite Coal Co.	12		12		16	412				
	Oregon	267		250	1828						
8626											
	Total	22877	1450	22879	448	16	892	17	2130	62	980
July.											
10334	Tordenskjold	5786		5761	1000	24	1240				
Santa Barbara	Lyman D. Foster	1265		1269	1540			4	1540		
11311	Hornelen	5948		6051	150			103	150		
11942	Tellus	3630		3541	160	88	2080				
10558	Thyra	5385		5386	548			1	548		
10575	Wilscott	3241		3267	210			26	210		
11473	Earl of Douglas	5898		5962	420			64	420		
	Anthracite Coal Co.	3	2080	3	2080					3	2080
	C. C. Gluick	1	1760	1	1760						
	Total	31158	1600	31244	1148	113	1080	199	628	3	2080

Entry No. 1907	Vessel	Invoice Weight Tons	Invoice Weight Lbs.	Ascertained Weight Tons	Ascertained Weight Lbs.	Short Tons	Short Lbs.	Over Tons	Over Lbs.	Anthracite Tons	Anthracite Lbs.
August											
S. D.	Tordenskjold	5963	185	5963	185						
S. D.	Hornelen	5997		6044	1840			47	1840		
12776	Tellus	3551		3521	2040	29	200				
L. A.	Tordenskjold	5714		5714							
11527	W. H. Smith	2410		2393	550	16	1690				
	Strathspoy	1387	740	1387	740						
	Craigshall	1944	850	1944	850						
12742	Jethou	5880		5916	150	36		36	150		
	Amiral Borreson	1265	710	1265	710						
	M. S. Dollar	500	1430	500	1430					10	70
	Anthracite Coal Co.	10	70	10	70						
	Total	34622	1745	34660	1845	45	1890	83	1990	10	70
September											
Eureka	Minnie Caine	1458		1458							
13582	Tellus	3547		3542	1100	4	1140				
13942	Hornelen	6057		6228	277	171	2200	171	277		
S. D.	Tordenskjold	5706		5690	40	15	850				
14492	Wellington	2310		2247	1390	62					
13838	Wellington	2282		2282	1650				1650		
	Barkston	5831		5734	1340	96	900				
	Elsa	1300		1300							
13514	A. J. Fuller	2410		2431	1310	21		21	1310		
14188	Scottish Monarch	5852		5763	900	88	1340				
14208	Bromley	3998		3956	495	41	1745				
14539	Indian Monarch	5757		5598	200	158	2040				
14490	Aeon	5789		5772	920	16	1320				
14650	Amiral Clry	1000		956	960	43	1280				
	Total	53297		52961	1622	528	1615	193	997		

Entry No.	Vessel	Invoice Weight Tons	Invoice Weight Lbs.	Ascertained Weight Tons	Ascertained Weight Lbs.	Short Tons	Short Lbs.	Over Tons	Over Lbs.	Anthracite Tons	Anthracite Lbs.
1907.											
Oct.											
15202	Hornelen	5696		5742	1760			46	1760		
15837	Tordenskjold	5758		5775	330			17	330		
15243	Hercules	5712		5655		57					
15287	Strathmairn	6007		6017	200			10	200		
16034	Eir	5514		5510	1670	3	570				
16186	Hatsu	3720		3726	50			6	50		
16084	Borderer	5893		5934	590			41	590		
15678	Koan Maru	3435		3418	184	16	2056				
15970	Belle of Ireland	5600		5465	150	134	2090				
	Total	47335		47244	454	212	236	121	690		
Nov.											
16648	Hornelen	6213		6278	670			65	670		
17572	Hornelen	6165		6260	950			95	950		
16062	Quito	4325		4196	1270	128	970				
16775	Oceano	6048		6045	900	2	1340				
16668	Queenhouse	4265		4313	2120			48	2120		
17082	Craighall	5630		5681	590			51	590		
17189	Boverie	5770		5852	1510			82	1510		
17829	Fitzclarence	5105		5220	340			115	340		
	W. G. Stafford & Co.	31	250	31	250					172	134
	Anthracite Coal Co.	172	134	172	134						
17022	Wellington	2275		2272	2230	2	10			15	900
	Anthracite Coal Co.	15	900	15	900						
S. D.	Tordenskjold	5635	1010	5635	1010					187	1034
	Total	51650	54	51975	1674	133	80	458	1700	187	1034

Entry No.	Vessel	Invoice Weight Tons Lbs.	Ascertained Weight Tons Lbs.	Short Tons Lbs.	Over Tons Lbs.	Anthracite. Tons Lbs.
1907						
Dec.						
18304	Tordenskjold	5853	5818	34 1870		
18951	Titania	5787	5691	95 230		
17384	Craigvar	5910	5772	137 1730		
19068	Kelvenbank	4777	4747	29 930		
19083	Foraric	4696	4733		37 380	
	Anthracite Coal Co.	301	301			653
	Pacific Coast Co.	32	32			
296	Wellington	2269	2232	36 1080		
	Anthracite Coal Co.	10	10			2100
18718	Hornelen	6237	6111	125 180		
	Total	35873	35452	458 1540	37 380	513

Entry No.	Vessel	Invoice Weight Tons	Invoice Weight Lbs.	Ascertained Weight Tons	Ascertained Weight Lbs.	Short Tons	Short Lbs.	Over Tons	Over Lbs.	Anthracite. Tons	Anthracite. Lbs.
1908											
January	Tordenskjold	5965		5653	710	311	1530				
19764	Bessie Dollar	6825		6446	1428	378	812				
S. D. 279	Hornelen	6425		6088	2109	336	131				
787	Central Coal Co.	244	1380	244	1380						
19892	Bankfield	5162		5135	1890	26	350				
46	Finn	5424		5462	1940			38	1940		
509	Indra	7278		7009	372	268	1868				
19378	Marcellus	4460		4147	630	312	1610				
	Anthracite Coal Co.	197	32	197	32					197	32
	Anthracite Coal Co.	4	1240	4	1240					4	1240
	Total	41985	412	40390	531	1633	1821	38	1940	201	1272
February											
330	Cecil	4848		4777	1090	70	1150				
807	Yeddo	5234		5179	1065	54	1175				
1863	Camphill	4798		4818	690			20	690		
826	Thyra	5180		5110	911	69	1329				
845	Riverforth	6140		6014	630	125	1610				
1550	Aeon	5558		5559	2090			1	2090		
	Anthracite Coal Co.	212	270	212	270					212	270
	Pacific Coast Co.	5	1600	5	1600						
	Anthracite Coal Co.	10	2180	10	2180					10	2180
31986	Total	31986	1810	31688	1566	320	784	22	540	223	210

Entry No.	Vessel	Invoice Weight		Ascertained Weight		Short		Over		Anthracite	
		Tons	Lbs.	Tons	Lbs.	Tons	Lbs.	Tons	Lbs.	Tons	Lbs.
1908											
March											
1851	Titania.	5705		5664	1280	40	960				
	Levi G. Burgess	2173		2173							
1293	J. H. Lunsmann	1755		1696	1940	58	300				
3435	Inverie	5892		5885	1440	6	800				
3532	Columbia	2220		2220							
3889	Rygja	5346		5397	698			51	698		
2853	Oriana	4550		4381	500	168	1740				
	Strathdon	5924		5884	1470	39	770				
	Hind, Rolph & Co.	721	350	721	350						
2515	Nederland	5345		5358	864			13	864		
	Hind, Rolph & Co.	100	220	100	220						
3491	Kelvenbank	5000		4995	1266	4	974				
1549	Gymeric	5250		5112	899	137	1341			214	400
	Anthracite Coal Co.	214	400	214	400						
	Andromeda	416		416							
	Anthracite Coal Co.	1	310	1	310					1	310
	Total	50612	1280	50222	437	455	165	64	1562	215	710
April											
3178	Tordenskjold	5820		5600	730	219	1510				
4467	Thor	7230		7141	1420	88	820				
4203	Hornelen	6244		6074	2000	169	240				
S. D.	Carleton	2570		2586	770			16	770		
	Kaulani	2320		2308	1330	11	910				
4887	Lucile	1950		1950							
4493	James Drummond	1970		1941	1600	28	640				
5072	Isaac Reed	1957		1957							
5419	A. J. Fuller	2419		2406	380	12	1860				
	Hind, Rolph & Co.	598	1636	598	1636					35	400
	Anthracite Coal Co.	35	400	35	400						1000
	Anthracite Coal Co.		1000		1000						
	Total	33114	796	32601	66	529	1500	16	770	35	1400

Entry No.	Vessel	Invoice Weight Tons	Invoice Weight lbs.	Ascertained Weight Tons	Ascertained Weight Lbs.	Short Tons	Short Lbs.	Over Tons	Over Lbs.	Anthracite Tons	Anthracite Lbs.
1908											
May											
5298	Titania	5702		5745	1060			43	1060		
5492	Tordenskjold	5960		5846	980	113	1260				
	R. C. Rickmers	3295	1550	3295	1550						
5467	Olympic	2102		2079	740	22	1500				
6191	Yeddo	3211		3013	860	197	1380				
5938-3523	Suveric	8333		8318	2000	14	240				
6085	Hawaian Isles	3319		3281	851	37	1389				
	Anthracite Coal Co.	9	380	9	380					9	380
	Anthracite Coal Co.		1700		1700						1700
	Andromeda	16	2050	16	2050						
	Total	31949	1200	31607	971	385	1289	43	1060	9	2080
June											
7308	Thor	7405		7335	1500	69	740				
7462	Titania	5899		5805	1910	93	330				
8647	Tordenskjold	5940		5841	1170	98	1070				
	J. J. Grady	13		13							
7733	Cambrian King	4882		4882							
	Wilscott	3256		3256							
1405	Diamond Head	1456		1441		15					
	Charles E. Moody	2411		2411							
7184	Jane L. Stanford	1463		1463							
	Anthracite Coal Co.	51	1730	51	1730					51	1730
	Anthracite Coal Co.	5	740	5	740					5	740
	Total	32782	230	32506	330	275	2140			57	230

Entry No.	Vessel	Invoice Weight Tons Lbs.	Ascertained Weight Tons Lbs.	Short Tons Lbs.	Over Tons Lbs.	Anthracite. Tons Lbs.
1908 July						
9499 9297	Thor Titania	7287 (2623 120) 3224	7134 1270 152 2567 120 124 3155 520 1743 1730 7 510	970 1600		
9544	James Tuft Anthracite Coal Co.	1751 6 700	6 700			6 700
	Total	14891	14606 2100 284	840		6 700
August 10429 10761						
	Tordonskjold Titania	5980 5840	5758 5737	221 102	800 1820	
	Pacific Coast Co. Jersey Island Co. Anthracite	1294 4 540 37	1294 4 540 37			
	Anthracite Coal Co. Hind, Rolph & Co.	1700 1716 8	1700 1716 8			37 300 1700
	Total	11962	11638 230 324	380		
September 12388						
	Titania	(2559 3145 5892 7077 999 1708	2502 3113 5738 2374 977 1680	56 31 153 21 27 290	1130 510 630 1150 1130 70	
11573 S. D. 72 11529 11846	Tordonskjold Thor Samar John Palmer				247	
	Total	21380	21336 2170 290	247		

Entry No.	Vessel	Invoice Weight Tons	Invoice Weight Lbs.	Ascertained Weight Tons	Ascertained Weight Lbs.	Short Tons	Short Lbs.	Over Tons	Over Lbs.	Anthracite Tons	Anthracite Lbs.
1908											
October											
13346	Tordenskjold	5647		5749	560			102	560		
13800	Thor	7435		7290	460	144	1780				
13424	Adolph	2648		2621	433	26	1807				
	Pacific Coast Coal Co.	310	1570	310	1570						
	Central Coal Co.	1	1760	1	1760					32	150
	Anthracite Coal Co.	32	150	32	150					5	1550
	Anthracite Coal Co.	5	1550	5	1550						
	Total	16080	550	16010	2003	171	1347	102	560	37	1700
November											
13942	Titania	5696		5725	890			29	890		
	Central Coal Co.		1000		1000						
15196	Tordenskjold	5927		5813	490	113	1750				
	Anthracite Coal Co.	107	760	107	760					107	760
122	Wellington	2348		2281	1950	66	290				
	Anthracite Coal Co.	10	640	10	640					10	640
	Total	14089	160	13938	1250	179	2040	29	890	117	1400
December											
16235	Titania	5850		5791	440	58	1800				
	Thor	7063		7241	1580			178	1580		
16566	Tordenskjold	5773		5706	1040	66	1200				
	Sharlett Dale Co.	2	1820	2	1820						
	Sharlett Dale Co.	2000	2000		2000						
	Alpena	1533		1515	614	17	1626				
15665	Gymeric	1520		1462	1270	57	970				
17357	Anthracite Coal Co.	108	1320	108	1320					108	1320
	Wellington	2272		2228	280	43	1960				
16678	Wellington	2264		2226	1250	37	990				
140	Anthracite Coal Co.	23	50	23	50					23	50
	Total	26410	710	26307	464	281	1826	178	1580	131	1370

Entry No.	Vessel	Invoice Weight Tons	Invoice Weight Lbs.	Ascertained Weight Tons	Ascertained Weight Lbs.	Short Tons	Short Lbs.	Over Tons	Over Lbs.	Anthracite Tons	Anthracite Lbs.
1909.											
January											
17788	Titania	5765	1000	5776	757	11	757				
	Central Coal Co.				1000						
S. D. 225	Tordenskjold	5752		5586	959		1281				
1149	Thor	7211		7110	1439		100				
	Big Bonanza	2013		1791	1160		1080				
17589	Mahukona	1118		1098	1400		19				
	Anthracite Coal Co.	91	1830	91	1830					91	1830
	Touson & Co.		700		700						
	Anthracite Coal Co.	9	160	9	160					9	160
	Total	21960	1450	21465	445	11	1762	11	757	100	1900
February											
	W. C. Brown	1	978	1	978						
	Notley & Son	2	1820	2	1820						
1643	Titania	5687		5693	1040	5	1040				
2484	Thor	7093		7158	1440	65	1440				
1911	Wellington	2367		2296	2180		60				
2668	Wellington	2260		2203	1230		1010				
	Central Coal Co.		2000		2000						
	Anthracite Coal Co.	139	2180	139	2180					139	2180
	Anthracite Coal Co.	7	1620	7	1620					7	1620
	Total	17559	1878	17504	1048	71	1070	71	240	147	1560

Entry No.	Vessel	Invoice Tons	Weight Lbs.	Ascertained Weight Tons	Weight Lbs.	Short Tons	Lbs.	Over Tons	Lbs.	Anthracite. Tons	Lbs.
1909											
March											
3130	W. C. Brown	1	978	1	978						
3778	Titania	5673		5684	1250			11	1250		
	Thor	7088		7244	1690			156	1690		
2520	Central Coal Co.		1000		1000						
	Tordenskjold	6000		5920	10	19	2230				
	Pacific Coast	500			500						
	Anthracite Coal Co.	66	30	66	30					66	30
	Anthracite Coal Co.	33	1905	33	1905					33	1905
26	Wellington	2284		2348	800			64	800		
	Total	21146	2173	21299	1443	79	2230	232	1500	99	1935
April											
4486	Titania	5767		5706	220	60	2020				
5498	Titania	5710		5775	1250			65	1250		
4892	Thor	7112		7297	1680			185	1680		
	W. C. Brown & Co.	2	1956	2	1956						
	Central Coal Co.		1000		1000						
	Anthracite Coal Co.	80	1060	80	1060					80	1060
	Anthracite Coal Co.	3	1830	3	1830					3	1830
	Notley & Son	2	1820	2	1820						
	Total	18679	946	18869	1856	60	2020	251	690	84	650
May											
6375	Wellington	2300		2202	2160						
6420	Thor	7200		7323	2120	97	80	123	2120		
S. D. 394	Titania	5929		5861	410	67	1830				
	Central Coal Co.		1000		1000						
	Anthracite Coal Co.	9	450	9	450					9	450
	H. J. Haney		500		500						
	Total	15438	1950	15397	2160	164	1910	123	2120	9	450

Entry No.	Vessel	Invoice Weight Tons Lbs.	Ascertained Weight Tons Lbs.	Short Tons Lbs.	Over Tons Lbs.	Anthracite. Tons Lbs.
1909.						
June						
8010	Wellington	2421	2376	44	1270	
6946	Wellington	2305	2342		37	2000
7497	Thor	7112	7291		179	630
8034	Titania	5819	5810	8	990	
	W. C. Brown	1	1			
	Anthracite Coal Co.	54	54			54
	Anthracite Coal Co.	2	2			2
						310
						1220
	Total	17715	17879	53	217	56
						1530
July						
8485	Thor	7165	7171		6	460
8577	Wellington	2322	2329		7	1420
9427	Titania	5840	5704	135	2220	
	Central Coal Co.		1000			
	Anthracite Coal Co.	14	14			14
						700
	Total	15341	15219	135	13	14
						700
August						
10354	Thor	7318	7273	44	1420	
10847	Titania	5901	5725	175	560	
	Western Fuel Co.	1350	1350			
10355	Wellington	2292	2225	66	1790	
	Anthracite Coal Co.	13	13			13
						1930
	Total	16874	16588	286		13
						1930

Entry No.	Vessel	Invoice Tons	Weight Lbs.	Ascertained Tons	Weight Lbs.	Short Tons	Over Tons	Anthracite Tons	Lbs.
1909									
September									
S.D. 109	Thor	7425		7376	1630	48			
11175	Wellington	2265		2259	1690	5			610
O.-63	Wellington	2339		2311	100	27			550
12084	Tordenskjold	5998		5786	570	211			2140
	San Rafael		2145		2145				1670
	Pacific Coast Co.	2514	747	2514	747				
	Bayard	2006	1870	2006	1870				
	Anthracite Coal Co.	8	92	8	92			8	92
	Total	22557	374	22263	2124	293		8	92
October									
12246	Titania	5784		5808	1450		24	1450	
13459	Thor	7325		7289	470	35			
	Central Coal Co.		1000		1000				1770
	S. H. Chedo & Co.	1	1760	1	1760				
12391	Inverta	2502		2491	350	10			1890
	Anthracite Coal Co.	23	60	23	60			23	60
O.-79	Wellington	2329		2320	1230	8			910
O.-95	Wellington	2313		2301	1800	11			440
	Anthracite Coal Co.	11	2080	11	2080			11	2080
	Total	20290	420	20248	1340	66	24	1450	2140

Entry No.	Vessel	Invoice Weight Tons	Invoice Weight lbs.	Ascertained Weight Tons	Ascertained Weight Lbs.	Short Tons	Short Lbs.	Over Tons	Over Lbs.	Anthracite Tons	Anthracite Lbs.
1909											
November											
14579	Thor	7218		7135	630	82	1610				
	S. H. Cheda	1	2050	1	2050						
	Central Coal Co.		1000		1000						
14962	Wellington	2307		2207	1310	99	930	67	80		
15345	Oberon	700		767	80						
9591	Thiers	3163		3094	1390	68	850				
14620	Gymeric	1841		1814	450	26	1790				
	Anthracite Coal Co.	90	1570	90	1570					90	1570
15281	Leelanaw	2798		2611	1530	186	710				
	Anthracite Coal Co.	4	486	4	486					4	486
	Total	18124	626	17727	1536	463	1410	67	80	94	2056
December											
15837	Wellington	2307		2235	1860	71	380				
16471	Leelanaw	2831		2706	2130	124	110				
16059	Thor	7314		7169	1030	144	1210				
	Central Coal Co.	1	760	1	760						
	Kilburn	1742	410	1742	410						
	Agot	767	1720	767	1720						
14589	A. J. Fuller	2453		2414	120	38	2120				
7098	Inca	1632		1593	1460	38	780				
	Koko Head	1907	1940	1907	1940			22	1282		
8747	W. A. Holden	1797		1819	1282						
7347	Puako	1931		1857	1860	73	380				
12976	Polaris	1220		1220	1040	5	1200				
13386	David Evans	1233		1183	2220	63	20				
7374	Kohala	1247									
	Grace & Co.	567	1030	567	1030						
	Anthracite Coal Co.	110	1080	110	1080					110	1080
12971	Amazon	1825		1870	1220			45	1220		
16499	Amaranth	1729		1710	1590	18	650				
	Anthracite Coal Co.	17	106	17	106					17	106
	Total	29622	296	29129	458	577	130	68	262	127	1186

Entry No.	Vessel	Invoice Weight Tons	Invoice Weight Lbs.	Ascertained Weight Tons	Ascertained Weight Lbs.	Short Tons	Short Lbs.	Over Tons	Over Lbs.	Anthracite Tons	Anthracite Lbs.
1910											
January											
S. D. 366	Central Coal Co.	7277	1000	7207	1000						
807	Thor	2795		2622	180	69	2060				
	Leelanaw				990	172	1250				
	Central Coal Co.				1000						
809	W. R. Grace & Co.	72	2110	72	2110	243	1973				
	El Lobo	5500		5256	267						
	Anthracite Coal Co.	322	1745	322	1745					322	1745
	Hind, Rolph & Co.	1322	800	1322	800					10	1155
	Anthracite Coal Co.	10	1155	10	1155						
	Total	17301	1090	16815	287	486	803			332	1900
February											
1434	Thor	7217		7157	1750	59	490				
	Alert	59	230	59	230						
	A. L. Wright	1	978	1	978						
	Central Coal Co.	2	520	2	520						
1649	Tricolor	6670		6547	1488	122	752				
	Anthracite Coal Co.	113	130	113	130					113	130
1731	Hercules	4507		4393	1880	113	360				
2206	Seminole	5500		5158	372	341	1868				
1803	Leelanaw	2850		2761	480	88	1760				
	Anthracite Coal Co.	7	863	7	863					7	863
	Total	26927	481	26201	1971	725	750			120	993

Entry No.	Vessel.	Invoice Weight Tons	Invoice Weight Lbs.	Ascertained Weight Tons	Ascertained Weight Lbs.	Short Tons	Short Lbs.	Over Tons	Over Lbs.	Anthracite. Tons	Anthracite. Lbs.
1910											
March											
	Central Coal Co.		1000		1000						
	W. G. Stafford & Co.	30	1150	30	1150						
	Thor	7145		7128		16	365				
2509	Central Coal Co.		2000		2000						
3205	Hazel Dollar	1850		1699	1370	150	870				
3297	Strathay	6400		6186	590	213	1650				
	W. G. Stafford & Co.	36	1760	36	1760					53	1800
	Anthracite Coal Co.	53	1800	53	1800						
3198	Leelanaw	2745		2707	1380	37	860			1	1760
	Anthracite Coal Co.	1	1760	1	1760			14	1110		
3562	Thor	7226		7242	1110						
	Total	25492	510	25069	115	417	1505	14	1110	55	1320
April.											
	Central Coal Co.		1000		1000						
	George Curtis	600	1870	600	1870						
	Thode Pagelund	6698		6514	740	183	1500				
4019	S. H. Cheda & Co.	3	1860	3	1860						
	Thor	7029	1210	7029	1210						
	W. G. Stafford & Co.	14	1530	14	1530						
3818	Knight of St. George	6015		5889	1220	125	1020				
4917	Dakotsh	3500		3425	1614	74	626				
	Central Coal Co.	473	1190	473	1190					24	2170
	Anthracite Coal Co.	24	2170	24	2170						1000
	Anthracite Coal Co.		1000		1000						
	Total	24361	630	23977	1964	383	906			25	930

Entry No.	Vessel	Invoice Weight Tons	Invoice Weight Lbs.	Ascertained Weight Tons	Ascertained Weight Lbs.	Short Tons	Short Lbs.	Over Tons	Over Lbs.	Anthracite Tons	Anthracite Lbs.
1910											
May											
5671	Thor	7293		7224	2120	68	120				
	Central Coal Co.		1000		1000						
	Hind, Rolph & Co.	482	1930	482	1930						
	Central Coal Co.	110	740	110	740						
5928	Leelanaw	2765		2742	230	22	2010				
	Anthracite Coal Co.		850		850						850
	Total	10652	40	10561	150	90	2130				850
June											
7179	Thor	7348		7204	910	143	1330				
S. D. 657	Thor	7318		7216	1210	101	1030				
	S. T. Alexander	1091		1091							
7156	Leelanaw	2850		2725	880	124	1360				
	Anthracite Coal Co.	11	1010	11	1010					11	1010
	Hind, Rolph & Co.	506	1560	506	1560						
	Hind, Rolph & Co.	389	1050	389	1050						
	Hind, Rolph & Co.	399	1470	399	1470						
	Hind, Rolph & Co.	401	30	401	30						
	Hind, Rolph & Co.	285	590	285	590						
	Total	20600	1230	20230	1990	369	1480			11	1010

Entry No.	Vessel.	Invoice Weight Tons	Invoice Weight Lbs.	Ascertained Weight Tons	Ascertained Weight Lbs.	Short Tons	Short Lbs.	Over Tons	Over Lbs.	Anthracite. Tons	Anthracite. Lbs.
1910 July	Jethon	6871		6715	1291	155	949				
8582	Thor	7359		7242	1610	116	630				
9511	Central Coal Co.		1000		1000						
8186	Leelanaw	2823		2653	550	169	1690				
	Hind, Rolph & Co.		1220	409	1220						
	Hind, Rolph & Co.	358	1770	358	1770						
	Hind, Rolph & Co.	424	1960	424	1960						
	Hind, Rolph & Co.	1072	50	1072	50						
	Anthracite Coal Co.	9	2120	9	2120					9	2120
	Hind, Rolph & Co.	304	1440	304	1440						
	Hind, Rolph & Co.	119	2090	119	2090						
	Hind, Rolph & Co.	1437	1874	1437	1874						
	Total	21191	84	20749	1295	441	1029			9	2120
August	Manhattan	6994		6786	1345	207	895				
10742	Leelanaw	2869		2808	820	60	1420				
10441	Thor	7384		7260	1710	123	530				
10998	Leelanaw	2796		2742	520	53	1720				
	S. H. Cheda & Co.	1		1							
	Central Coal Co.	1	1760	1	1760					1	870
	Anthracite Coal Co.	1	870	1	870						
9506	Hind, Rolph & Co., Forest Home	1135		1154	844			19	844		
	Hind, Rolph & Co., John Palmer	1417	525	1417	525						
9644	Hind, Rolph & Co., H. K. Hall	1851		1830	220	20	2020				
9481	Hind, Rolph & Co., Amazon	1825		1779	750	45	1490				
9705	Hind, Rolph & Co., Crescent	2181		2156	340	24	1900				
10929	Hind, Rolph & Co., Antiope	1743		1743	1370				1370		
10808	Hind, Rolph & Co., Geo. E. Billings	1793		1782	1830	10	410				
	Forwarded	31992	915	31465	1704	546	1425	19	2214	1	870

Entry No.	Vessel	Invoice Weight Tons	Invoice Weight Lbs.	Ascertained Weight Tons	Ascertained Weight Lbs.	Short Tons	Short Lbs.	Over Tons	Over Lbs.	Anthracite Tons	Anthracite Lbs.
1910											
August											
9487	Brought forward	31992	915	31465	1704	546	1425	19	2214	1	870
	Hind, Rolph & Co.,										
	Dartford	1739		1716	800	22	440				
9645	Thomas B. Emigh,	1615		1631	1080			16	1080		
	Hind, Rolph & Co.										
10726	Hind, Rolph & Co.,	1204		1209	110			5	110		
	Polaras										
	Total	36550	915	36022	1454	568	1865	41	164	1	870
September											
11399	St. Nicholas	4107		4058	1480	48	760				
	Thor	7203		7275	940			72	940		
12671	Leelanaw	2867		2764	1550	102	690				
12019	Leelanaw	2849		2716	590	132	1650				
12924	Simla	3690	1692	3690	1693						
	Central Coal Co.		2000		2000						
	W. M. Duval & Co.	50		50						4	570
	Anthracite Coal Co.	4	570	4	1500						
	Central Coal Co.		1500								
	Total	20772	1282	20551	1362	283	860	72	940	4	570
October											
13447	Leelanaw	2759		2681	1050	77	1190				
14117	Falls of Orehy	6839		6686	1810	152	430				
	S. H. Cheda	1		1							
	Central Coal Co.		1000		1000						
13627	Thor	7389		7357	798	31	1442				
13006	Alpena	1493		1483	1000	9	1240				
	Hind, Rolph & Co.	4405	1664	4405	1664					7	520
	Anthracite Coal Co.	7	520	7	520					4	1550
	Anthracite Coal Co.	4	1550	4	1550						
	Invincible	2002	2050	2002	2050					3	1280
	Anthracite Coal Co.	3	1280	3	1280						
	Total	24905	1344	24634	1523	270	2062			15	1110

Entry No.	Vessel	Invoice Weight Tons	Invoice Weight Lbs.	Ascertained Weight Tons	Ascertained Weight Lbs.	Short Tons	Over Tons	Anthracite Tons
1910								
November								
15630	Thor	7181	1834	7181	1834			
	Leelanaw	2790		2790				
	Honoipu	918		918				
	S. H. Cheda	2		2				
14884	Central Coal Co.		2000		2000			
14228	Greystoke Castle	5209		5136	1310	72		930
	Poltalloch	3753		3703	450	49		1790
	Agot	3004	1010	3004	1010			
	Hind, Rolph & Co.	9	1636	9	1636			
	Solveig	220		220				
	Anthracite Coal Co.	50	40	50	40			40
14433	Leelanaw	2798		2854	470		56	
	Anthracite Coal Co.	1	570	1	570			1
	Total	25938	370	25872	360	122	56	610
December								
16541	Cuseo	5825		5682	1860	142		380
17097	Thor	7145		7115	1700	29		540
	W. G. Stafford	10	1410	10	1410			
	Central Coal Co.		1000		1000			
16060	James Tuft	1692		1682	70	9		2170
16806	Harpeake	5983		5959	710	23		1530
	Central Coal Co.		1000		1000			
	Anthracite Coal Co.	46	1660	46	1660			46
	Anthracite Coal Co.	9	660	9	660			9
	Total	20712	1250	20507	1110	205		80

Entry No.	Vessel	Invoice Weight Tons	Invoice Weight Lbs.	Ascertained Tons	Weight Lbs.	Short Tons	Over Tons	Anthracite Tons	Anthracite Lbs.
1911									
January									
202	Elsa	1848		1843	1870	4			
	Creydon	591	2010	591	2010				
	Central Coal Co.		1000		1000				
788	M. S. Dollar	5976		6011	1796		35		1796
1541	Thor	7243		7190	1140	52			
	Central Coal Co.		2000		2000				
	Standard Oil Co.	405	100	405	100				
	Anthracite Coal Co.	49	2050	49	2050			49	2050
	Titania	2502	1220	2502	1220				
	Anthracite Coal Co.		2120		2120				2120
	Total	18618	1540	18597	1866	56	35	50	1930
February									
2087	Puritan	3467		3444	1999	22			
	Hind. Rolph & Co.				1000				
2423	Strathblane	5976	1000	5945	1456	30			
2756	J. C. Meyer	1318		1330	1892		12		1892
	Anthracite Coal Co.	58	1220	58	1220			58	1220
2597	Thor	7193		7200	930		7		930
3082	Tordenskjold	5729		5475	1829	253			
	S. H. Cheda & Co.	2	1120	2	1120				
	Central Coal Co.	1	1760	1	1760				
	Total	23746	620	23460	2006	305	20	58	1220

Entry No.	Vessel.	Invoice Weight Tons Lbs.	Ascertained Weight Tons Lbs.	Short Tons Lbs.	Over Tons Lbs.	Anthracite Tons Lbs.
1911.						
March						
3626	Thor	7193	7056	136		
4195	St. Ronald	5709	5418	290		
	W. G. Stafford & Co.	1	1	480		
	Central Coal Co.	1000	1000			
4523	Henley	4623	4673	1360	50	1360
2708	Koko Head	1873	1801	924		
3221	Puako	1852	1858	1170	6	1170
3560	Belle of Scotland	6661	6685	216	24	216
	Central Coal Co.	1	1	520		
	Anthracite Coal Co.	31	31	1390		31
3900	Inca	1601	1601	1400		1400
	Total	29546	29130	498	81	1390
April						
S. D. 548	Thor	7306	7337	920	31	920
5471	Henley	4958	4824	650		
4747	Titania	5401	5326	379		
5652	Titania	5575	5466	460		
	S. H. Cheda & Co.	4	4	1765		
	Central Coal Co.	1000	1000			
4971	Skipton Castle	5855	5834	1470	20	770
5446	W. H. Talbot	1224	1213	1442	10	798
5394	Lahaina	1639	1622	974	16	1266
	Total	31963	31630	364	31	920

Entry No.	Vessel.	Invoice Weight Tons	Invoice Weight Lbs.	Ascertained Weight Tons	Ascertained Weight Lbs.	Short Tons	Short Lbs.	Over Tons	Over Lbs.	Anthracite Tons	Anthracite Lbs.
1911	August										
S. D. 72	Thor	7234		7166	49	67	2191				
10865	Damara	7514		7525	1110			11	1110		
1278	Tricolor	4415		4284	1130	130	1110				
11784	Candidate	3067		2932	2230	134	10				
	Central Coal Co.		1000		1000		1000				
	Palo Alto F. & F. Co.		1000		1000						
10909	Kohala	1257		1266	1700			9	1700		
10910	Makaweli	1333		1331	860	1	1380				
10977	Mahukona	1066		1061	552	4	1688				
10871	Earl of Forfar	224	1625	224	1623						
	Total	26111	1383	25794	54	338	1899	21	570		
September											
12031A	Thor	3323		3304	1010	18	1230				
	Washangal	1054		1054							
12746	Senator	5098		5021	2000	76	240				
	Central Coal Co.		500		500						
12031B	Thor	4019		4019							
11689	W. F. Babcock	2865		2927	2075			62	2075		
	W. C. Brown		2100		2100						
	Total	16360	360	16328	965	94	1470	62	2075		

Entry No.	Vessel.	Invoice Weight Tons	Invoice Weight Lbs.	Ascertained Weight Tons	Ascertained Weight Lbs.	Short Tons	Short Lbs.	Over Tons	Over Lbs.	Anthracite Tons	Anthracite Lbs.
1911											
October											
13747	Thor	7376		7249	780	126	1460				
14417	Bannockburn	7445		7365	2170	79	70				
14771	Belle of Scotland	1506		1453	350	52	1890				
14137	Palo Alto	1	2125	1	2125						
	Admiral Borreson	6110		6077	1170	32	1070				
	Chancellor	993	1440	993	1440						
	Pacific Coast Coal Co.	18900		18900							
	Total	42332	1325	42041	1315	291	10				
November											
15431	Thor	7218		7271	1410	53	1410				
	Palo Alto F. & F. Co.	1	2050	1	2050						
	Western Fuel Co.,										
	Nanaimo	7045	1680	7045	1680						
	W. C. Brown	1	1960	1	1960						
	Central Coal Co.		1000		1000						
15583	Poltalloch	3739		3721	620	17	1620				
16115	Puako	1900		1906	2218	6	2218				
16399	Queen Elizabeth	5871		5832	2190	38	50				
16033	British Yoeman	2940		2875	1980	64	260				
15721	Commerce	991		988	1710	2	530				
	Anthracite Coal Co.		200		200						200
	Total	29709	170	29647	1338	122	220	60	1388		200

Entry No.	Vessel	Invoice Weight Tons	Invoice Weight Lbs.	Ascertained Weight Tons	Ascertained Weight Lbs.	Short Tons	Short Lbs.	Over Tons	Over Lbs.	Anthracite Tons	Anthracite Lbs.
1911											
December											
17251	Mathilda	6333		6229	630	103	1610				
	W. C. Brown	1	1960	1	1960						
	Palo Alto F. F. Co.	1	2050	1	2050						
	Central Coal Co.		1000		1000						
16942	J. C. Meyer	1310		1309	1950		290				
17489	Henrik Ibsen	5833		5799	130	33	2110				
17006	Dunbar	5663		5602	1640	60	600				
	Anthracite Coal Co.	13	1690	13	1690					13	1690
	Total	19156	2220	18958	2090	198	130			13	1690

Entry No.	Vessel	Invoice Weight Tons	Invoice Weight Lbs.	Ascertained Weight Tons	Ascertained Weight Lbs.	Short Tons	Short Lbs.	Over Tons	Over Lbs.	Anthracite Tons	Anthracite Lbs.
1913											
January											
189	Thor	7216		7210	1760	5	480				
1907	Thor	7477		7100	1140	376	1100				
	Honoipu	906		906							
	Central Coal Co.		2000		2000						
18019	Strathgarry	5886		5851	2040	34	200				
264	Drummuir	2786		2726	1120	59	1120				
1351	T. P. Enright	1624		1625	1440			1	1440		
	Central Coal Co.		1000		1000						
	J. P. Taylor	18	1130	18	1130						
	Anthracite Coal Co.	1		1						1	
	Anthracite Coal Co.	67	720	67	720					67	720
18013	W. H. Talbot	1239		1229	950	9	1290				
17838	Lord Templeton	3211		3201	1780	9	460				
	Total	30433	370	29940	1640	494	170	1	1440	68	720
February											
2608	Thor	7093		7029	790	63	1450				
2463	Wellington	2507		2305	440	201	1800				
3081	Wellington	2353		2171	440	181	1800				
	Palo Alto F. & F. Co.	2	460	2	460						
	W. C. Brown	1	1960	1	1960						
	Central Coal Co.	1	760	1	760						
1991	Lahaina	1661		1663	2110			2	2110		
2240	James Johnson	1617		1642	1080			25	1080		
	Anthracite Coal Co.	42	1110	42	1110					42	1110
	Central Coal Co.		300		300						
	Anthracite Coal Co.		2000		2000						2000
	Total	15279	2110	14861	250	447	570	28	950	43	870

Entry No.	Vessel.	Invoice Weight Tons	Invoice Weight Lbs.	Ascertained Weight Tons	Ascertained Weight Lbs.	Short Tons	Short Lbs.	Over Tons	Over Lbs.	Anthracite Tons	Anthracite Lbs.
1912											
March											
5175	Thor	7165		7160	1600	4	460				
4726	Ikalis	6500		6291	810	208	1430				
	Palo Alto F. F. Co.	2	460	2	460						
	Central Coal Co.		1000		1000						
4229	Wellington	2257		2264	1680			7	1680		
3784	Thor	7097		7106	1780			9	1600		
	J. J. Moore & Co.	1200		1200							
4966	Antiope	2018		2015	1570	2	670				
4967	Espada	1030		1003	1050	26	1190				
	Anthracite Coal Co.	52		52	1180					52	1180
	Wellington	2295		2313	490			18	490		
5070	J. J. Moore & Co.	1400		1400							
	Anthracite Coal Co.		2000		2000						2000
	Total	31018	160	30812	180	241	1510	35	1530	53	940
April.											
6028	Wellington	2243		2244	1780			1	1780		
6279	Thor	7162		7105	1660	56	580				
7591	Ikala	6569		6549	320	19	1920				
	W. C. Brown		2100		2100						
	Central Coal Co.		1000		1000						
6365	Hind, Rolph & Co., Americano	1273		1259	2140	13	100				
	J. J. Moore & Co.	184	343	184	343						
6364	George E. Billings	1874		1842	2210	31	30			39	1670
	Anthracite Coal Co.	39	1670	39	1670						
	Balfour, Guthrie & Co.	40	1860	40	1860						
	W. G. Stafford & Co.	2	1120	2	1120						
6582	Wellington	2331		2329	990	1	1250				
	Total	21720	1373	21600	1513	121	1640	1	1780	39	1670

Entry No.	Vessel.	Invoice Weight Tons	Weight Lbs.	Ascertained Weight Tons	Lbs.	Short Tons	Lbs.	Over Tons	Lbs.	Anthracite Tons	Lbs.
1912											
May											
8181	Wellington	2359		2326	1970	32	270				
8853	Wellington	2434		2329	1720	104	520				
	Central Coal Co.		2000		2000						
7309	H. K. Hall	1822		1826	780			4	780		
7754	Titania	4236		4172	1940	63	300				
8680	Dartford	1145		1142	420	2	1820				
	Dartford	602	1820	602	1820						
8864	Georgiana	1387		1356	1550	30	690				
8810	Kohala	1273		1227	220	45	2020				
	Anthracite Coal Co.	22	1880	22	1880					22	1880
	Total	15282	1220	15008	860	278	1140	4	780	22	1880
June											
9438	Central Coal Co.		1000		1000						
10298	Christian Bors	6556		6460	1320	95	920				
S. D. 751	Wellington	2415		2306	1270	108	970				
10810	Thor	7198		7151	950	46	1290				
9471	Christian Bors	7047		6880	1170	166	1070				
10638	Dunsyre	3490		3413	1980	76	260				
9448	Riverforth	4675		4611	480	63	1760				
9475	Battle Abbey	2305		2244	2017	60	223				
	Wellington	2345		2310	2130	34	90				
	J. C. Lubben	27	1870	27	1870						
	C. Nananny	10	300	10	300						
	A. D. Newbert	7	1570	7	1570						
	Total	36077	260	35426	397	650	2103				

Entry No.	Vessel	Invoice Weight Tons	Invoice Weight Lbs.	Ascertained Weight Tons	Ascertained Weight Lbs.	Short Tons	Short Lbs.	Over Tons	Over Lbs.	Anthracite Tons	Anthracite Lbs.
1912											
July											
11002	Wellington	2371		2348	2150	22	90				
11822	Wellington	2415		2348	2090	66	150				
12100	Thor	7180		7107	710	72	1530				
12398	Wellington	2372		2342	470	29	1770				
		2	460	2	460						
	Palo Alto F. F. Co.	73	850	73	850	15	1726			73	850
	Anthracite Coal Co.	1903		1077	514						500
10787	Mahukona		500		500						
	Anthracite Coal Co.	14	1000	14	1000						
	A. P. Newbert										
	Total	15521	570	15314	2024	206	786			73	1350
August											
13089	Selveig	6898		6869	382	28	1858				
13109	Gifford	6846		6809	1540	36	700				
14971	Wellington	2355		2360	210			5	210		
	Thor	7244		7206	1960	37	280				
		2		2							
	S. A. Johnson	3969		3981	1135			12	1135		
13090	Ikalis	8148		8011	970	136	1270				
13439	Artemis	2371		2364	1560	6	680				
13518	Wellington	7980		7846	539	133	1701				
14319	Danara	43	650	43	650					43	650
	Anthracite Coal Co.	779	1008	757	110	22	898				
14497	Senator, B. G. & Co.	1	1760	1	1760					1	1760
	Anthracite Coal Co.		1000		1000						
	Central Coal Co.										
	Total	46637	2178	46254	616	401	667	17	1345	45	170

Entry No.	Vessel	Invoice Tons	Weight Lbs.	Ascertained Tons	Weight Lbs.	Short Tons	Over Tons	Anthracite Tons
1912								
September								
16018	Ikalis	6430		6197	130	232	2110	
16125	Thor	7293		7094	1300	198	940	
14927	Hecla	2127		2077	520	49	1720	
15540	Koko Head	1931		1902	610	28	1630	
16628	Titania	4829		4771	2040	57	200	
16480	Wellington	2304		2317	1240		13	1240
18730	Lord Curzon	4897		4894	1500	2	740	
	Anthracite Coal Co.	5	1710	5	1710			5 1710
	Total	29816	1710	29261	90	569	620	5 1710
October								
17852	Wellington	2227		2297	1210		70	1210
19335	Wellington	2246		2264	1530		18	1530
	Central Coal Co.	3	1280	3	1280			
16559	Ikala	4283		4203	2230	79	10	
16366	Poltalloch	3812		3723	2140	88	100	
17480	Inverie	5843		5835	1127	7	1113	
	Anthracite Coal Co.	3	1230	3	1230			3 1230
	Total	18418	270	18332	1787	174	1223	3 1230

Entry No.	Vessel	Invoice Weight Tons	Invoice Weight Lbs.	Ascertained Weight Tons	Ascertained Weight Lbs.	Short Tons	Short Lbs.	Over Tons	Over Lbs.	Anthracite Tons	Anthracite Lbs.
1913											
November											
21015	Queen Elizabeth	6767		6718	642	48	1598				
	W. G. Stafford	28	690	28	690						
21429	Wellington	2248		2246	1850	1	390				
	Palo Alto F. & F. Co.	3		3							
	Central Coal Co.		2000		2000						
	Anthracite Coal Co.	13	1970	13	1970					13	1970
	Pacific Coast Co.	96		96							
20269	Lord Templeton	3256		3220	1040	35	1200				
	Magician, B. & G. Co.	524	2090	524	2090						
	El Brizzolara	238	1880	238	1880						
	Wheeler & Sons	3	1920	3	1920						
	Anthracite Coal Co.	3	2180	3	2180					3	2180
	Total	13184	1530	13099	582	85	948			17	1910
December											
22150	Central Coal Co.	22	1830	22	1830						
	Wellington	2228		2252	1560			24	1560		
	Palo Alto F. & F. Co.	8	2050	8	2050						
23400	Wellington	2228		2235	1900			7	1900		
	Western Fuel Co.	1205		1205							
21284	Antiope	2080		2057	1910						
21749	British Yeoman	2910		2871	950	39	1290				
	Anthracite Coal Co.	13	510	13	510					13	510
	Anthracite Coal Co.	5	840	5	840					5	840
	Wheeler & Son.	9	1760	9	1760						
	J. C. Rahan	1	2200	1	2200						
	Anthracite Coal Co.	3	760	3	760					3	760
	Total	10716	990	10688	590	60	1620	32	1220	21	1910

SUMMARY SHOWING TOTAL INVOICE AND ASCERTAINED WEIGHTS OF COAL ON HAND AND RECEIVED
 BY THE WESTERN FUEL COMPANY FROM April 1, 1906 to DECEMBER 31, 1912; ALSO
 TOTAL "SHORTS" AND "OVERS."

Year	Invoice Weight		Ascertaind Weight		Short		Over	
	Tons	Lbs.	Tons	Lbs.	Tons	Lbs.	Tons.	Lbs.
1906	264466	1436	262875	923	2695	714	1103	1567
1907	459477	2192	456656	468	4370	1463	1548	1979
1908	327243	1738	322854	918	5132	762	742	2182
1909	238322	601	236588	1368	2814	1882	1081	409
1910	275405	266	271224	140	4365	570	184	444
1911	310529	93	308033	441	2934	1497	438	1845
1912	284106	1541	280599	1569	3731	1797	224	1825
Total	2159551	1147	2138831	473	26044	1965	5324	1291

[U. S. Exhibit No. 125—Table “B”—Sales of Foreign Coal from April 1, 1906, to December 31, 1912.]

EXHIBIT “B.”

WESTERN FUEL CO. REPORT.

[Endorsed]: No. 5233. U. S. v. Howard et al.
U. S. Exhibit No. 125—Table “B.” Francis Krull.

No. 2576. U. S. Circuit Court of Appeals for the Ninth Circuit. U. S. Exhibit 125—Table “B.” Received and Filed March 4, 1915. F. D. Monckton, Clerk.

EXHIBIT "B."

SALES OF FOREIGN COAL IMPORTED OR PURCHASED BY
WESTERN FUEL CO., FROM APRIL 1, 1906, TO DECEMBER
31, 1912. AS PER SHEETS FURNISHED BY
WESTERN FUEL COMPANY.

Date	Tons	Pounds
1906		
April	29237	1182
May	29899	759
June	24669	64
July	21817	1830
August	27721	1957
Sept.	23164	2002
Oct.	37966	1586
Nov.	28259	2140
Dec.	38797	2215
	<hr/>	<hr/>
Total	261535	295
1907		
Jan'y	30265	1933
Feby.	37740	903
March	49099	1152
April	37047	785
May	26748	2091
June	22957	2111
July	31519	1972
August	41284	1543
Sept.	46059	2168
Oct.	43562	1517
Nov.	48337	1308
Dec.	20238	976
	<hr/>	<hr/>
Total	434863	539
1908		
Jan'y	33391	1762
Feb.	24169	56
Mar.	26834	154
April	27833	1641
May	22696	1747
June	19164	709
July	19197	1441

Date	Tons	Pounds
August	22550	1194
Sept.	27039	2010
Oct.	25603	1999
Nov.	26179	1598
Dec.	27068	487
	<hr/>	<hr/>
Total	301729	1358
1909		
Jan'y	29987	1557
Feb.	21456	1366
March	28369	659
April	19616	702
May	24147	1469
June	18324	1003
July	15197	1338
August	22497	1589
Sept.	23661	287
Oct.	24011	1805
Nov.	28979	1533
Dec.	29027	598
	<hr/>	<hr/>
Total	285277	466
1910		
Jan'y	33954	1071
Feb.	18054	878
March	21786	1640
April	24397	47
May	18040	596
June	30326	2116
July	19969	1563
August	26797	2128
Sept.	29040	1560
Oct.	27236	63
Nov.	32088	1409
Dec.	18104	571
	<hr/>	<hr/>
Total	299797	202
1911		
Jan'y	19746	1640
Feb.	20733	1047
March	23330	1432
April	30496	1064

Date	Tons	Pounds
May	18170	212
June	20909	746
July	21212	1840
August	27877	1066
Sept.	26212	1615
Oct.	24273	1123
Nov.	33239	1299
Dec.	25714	900

Total	291917	544
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1912		
Jan'y	24671	2044
Feb.	25485	909
March	22238	283
April	29259	1423
May	28146	1844
June	24989	1411
July	25596	355
August	34845	598
Sept.	23331	378
Oct.	31921	798
Nov.	26198	1180
Dec.	24412	666

Total	321096	683
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SUMMARY BY YEARS.

Apr. 1 to Dec. 31, 1906	261535	295
Jan. 1 to Dec. 31, 1907	434863	539
Jan. 1 to Dec. 31, 1908	301729	1358
Jan. 1 to Dec. 31, 1909	285277	466
Jan. 1 to Dec. 31, 1910	299797	202
Jan. 1 to Dec. 31, 1911	291917	544
Jan. 1 to Dec. 31, 1912	321096	683

Total	2196215	1847
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Tons destroyed by fire Oct. 1908	326	
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Balance on hand Dec. 31st, 1912	4286	
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Grand Total	2,200,827	1847
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[U. S. Exhibit No. 125—Table “C”—Statement Showing Coal Laden on Barges, Disposition Thereof, and Excess Weighed Out of Barges, etc.]

EXHIBIT “C.”

WESTERN FUEL CO. REPORT.

[Endorsed]: No. 5233. U. S. v. Howard et al.
U. S. Exhibit No. 125—Table “C.” Francis Krull.

No. 2576 U. S. Circuit Court of Appeals for the
Ninth Circuit. U. S. Exhibit 125—Table “C.” Re-
ceived and Filed March 4, 1915. F. D. Monckton,
Clerk.

Date.	Barge.	Tons	Lbs.	Vessel	Tons	Lbs.	Without Drawback. Tons	Lbs.	With Drawback. Tons	Lbs.	(2)
1906.											
Jan. 31.	Theobald Tellus Terje Viken	1114-480 410-1100	1524	83 87-9	Sierra Mongolia Over 144-26	1668	1606		82	170	61 2096
Jan. 25.	Comanche Reidar Tellus	904-790 711-210	1615	79-84	Meade Siberia Track Over 55-1575	1671	335	27 660 1088	27	2067	
Feb. 2.	Ludlow Tellus Offsh. Bunkers Terje Viken Tellus	362-1310 60-550 563-40 95-1970	1081	85 87-9 88-90	San Jose Mongolia Baracouta Over 26-1731	1108	1121		26	1731	
Feb. 6.	Ludlow Titania		603		Sherman Over 2-1929	606	679	2 1929			
Feb. 7.	Melrose Titania		756		Sherman Over 31-555	788	135	31 555			
Feb. 10.	Nanaimo Titania		366	93-96	China Track Over 119-1466	485	2056	1 913	118	553	
		5948	890			6328	1452	63 665	316	2137	

Date	Barge	Tons	Lbs.	Vessel	Tons	Lbs.	Without Drawback Tons Lbs.	With Drawback Tons Lbs.	(3)
Mar. 5	Ludlow Otto Bunkers	633- 158-1560	10 1570	102-103 Ventura Over	850	690		58	1368
Mar. 6	Comanche Tellus Otto Terje Viken Offsh. B. Otto	866-1150 678-1480 183-2040 48- 620 684-1600	170	87-89 Mongolia Track Acapulco City Para Manchuria Track	847- 180 10-1070 359-1760 340-1680 931-1230 12-1590	377	13	1420	
Mar. 10	Energy Offsh. B. Otto	35-1330 757- 720	2050	100 Manchuria San Juan Korea	256- 70 348- 21 254- 780	858	871	5 5 14	1775 1080 2229
Mar. 17	Nanaimo Tellus Offsh. B. Offsh. B. Otto	850-1220 41-1140 9- 170 642-1620	1910	100 Manchuria *City Peking Korea Over	311-1760 292-1824 948- 30 8-1704	1552	1374	8	1704
			5590	*City of Panama	5763	1493	836	172	1677

Date.	Barge.	Tons.	Lbs.	Vessel	Tons	Lbs.	(5)	
							Without Drawback Tons	With Drawback Tons
1906 Apr. 2	Ludlow Terje Viken Titania	607-1100 939-440	105	Ventura Sesostris Cambrian King Siberia	199-1556 150-648 700-1147 662-940	5 27 11	5 27	7 1603
	Offsh. Bunkers	100-290	1830	Over 66-421 Korea Peru Track Coptic Siberia Track	207-2100 363-1080 12-200 680-196 909-520 17-330	2189	2186	25 1334
Apr. 5	Comanche Terje Viken Offsh. Bunkers Reidar Offsh. Bunkers Terje Viken Reidar Offsh. Bunkers	233-1210 302-1580 361-730 47-1170 538-10 566-700 120-	106-8 109 113	Over 16-1326 Siberia City Peking	489-842 408-1505	898	107	1 1288 2 1698 6 1991
Apr. 11	Nanaimo Titania		860	Over 37-1547 Newport San Jose Sonoma	284-679 378-1055 780-1589	1443	1083	37 1547 11 1219 15 824 31 1470
Apr. 14	Ruth Terje Viken Offsh. Bunkers Titania Bunkers	736-1050 192-1092 297-2110 158-40	112 114 117	Over 58-1273 Sonoma Over 73-1971		1154	551	73 1971
Apr. 16	Theobald Terje Viken		820			7398	1698	214 1505
			1880				38	553

Date.	Barge.	Tons	Lbs.	Vessel	Tons	Lbs.	Without Drawback Tons	Lbs.	With Drawback Tons	(6)
1906 Apr. 25	Melrose Titania Terje Viken	1746- 330 903-1150 753-1020	3403	260	113 119	Amaral Magon Siberia Sheridan Mongolia	789-1789 693-1079 622-2142 1008-2170	25 416 26 534	28 1100 32 390	
Apr. 23	Nanaimo Offsh. Bunkers Terje Viken	90- 190 600- 960	690	1150	116 119	Over 112-200 City Peking Mongolia	300-1352 426-1106	727 218		
Apr. 23	Comanche Offsh. Bunkers Terje Viken	47-1360 806-2160	854	1280	119	Over 36-1308 Mongolia Track Over 37-1770	880- 290 12- 520	892 810	36 1308 37 612	
May 3	Ludlow Offsh. Bunkers Titania Offsh. Bunkers Terje Viken	59-1010 593-1020 23-1600 410-1070	1089	220	121-2 120	China Acapulco Sheridan Over 65-751	227-2175 423- 600 503- 436	1154 971	12 2030 23 2136	
May 9	Comanche Terje Viken		915	490	121-2	China Doric	338-1848 608-1402	947 1010	20 1580	11 1180
May 12	Ruth Terje Viken		705	670	123	Over 32-520 City Panama Doric Over 43-911	292- 565 456-1016	748 1581	26 1037	16 2114
		7657	1830					7885 570	127 1310	199 1910

Date 1906.	Barge	Tons	Lbs.	Vessel	Tons	Lbs.	Without Drawback Tons	Lbs.	With Drawback Tons	Lbs.	(7)
May 12	Energy Terje Viken	344	200	125	City of Para Doric	378	925	6	450	28	275
				Over 34-725							
May 16	Nanaimo Offsh. Bunkers Terje Viken	846	950	121-2 126-7	China Manchuria Track	877	730		707	14	746
					8-2170					16	567
May 21	Theobald Terje Viken	1100	80	126-7	Over 30-2020 Manchuria	1127	315				
May 22	Ludlow Terje Viken Tellus	1328	2060	128	Over 27- 235 Doric City Sydney Burnside Logan			23	873	27	235
					266-1535 253- 259 350-1980 586- 64			30	1747	22	465
					Over 127-1778	1456	1598	51	933		
June 5	Comanche Offsh. Bunkers Titania Terje Viken	1760	1030	126-7 132	Manchuria Track Korea	1769	1085		99	4	323
					Over 9-55					4	1873
June 6	Energy Titania	595	400	131	Newport Korea Track					1	57
					Over 2-680	597	1080		30	1	593
				132							
		5975	240			6206	1253	112	359	119	654

Date 1906.	Barge.	Tons. Lbs.	Vessel.	Tons. Lbs.	Without Drawback Tons. Lbs.	With Drawback Tons. Lbs.	(8)
June 6	Theobald Terje Viken	1158 1790	133	Ventura Over 52-2010	1211 1560	52 2010	
June 20	Comanche Titania	979 1400	132	Korea Coptic	998 1761	15 2037	3 564
June 23	Melrose Titania Titania Offsh. Bunker Titania Terje Viken	941-1770 872- 728 226- 530 500-1180 501- 940	132	Over 19-361 Chas. E. Moody Korea Buford Coptic	169-1071 829- 690 899-1588 725- 767 572-199 845-1314	284 130 267	229
June 27	Theobald Offsh. Bunkers Offsh. Bunkers Titania Titania Offsh. Bunkers	60-1140 293- 50 741- 960 511-1410 246- 390	138	Over 960 lbs. Californian Over 97-1420	1950 890	97 1420	
July 3	Ruth Offsh. Bunker Titania Tellus Titania Terje Viken Offsh. Bunkers	59-1300 673- 580 349-1880 560-1720 365-1140 215- 0	129 133 139-41 140 146	San Juan Ventura Thetis City Peking Acapulco City Panama	302-1755 711- 308 363- 683 324- 45 303-1165 319-1780	13 230 30 1752 15 1613 14 45 13 314 13 1882	
July 3	Ludlow Terje Viken Titania Terje Viken Titania	671- 960 681-1900 559- 910 310- 10	132 133 136 142	Over 100-1356 Orizaba Korea Ventura San Jose Buford Sierra	200-2056 446- 867 173- 812 335- 775 382-1876 765- 319	7 0 15 1252 6 90 11 1544 13 782 26 1497	
		11481 268		Over 80-685	11832 360	52 683	298 1629

Date. 1906.	Barge.	Tons. Lbs.	Vessel.	Tons. Lbs.	Tons. Lbs.	(9)	
						Without Drawback	With Drawback
July 5	Nanaimo Titania Terje Viken Titania	850-2110 690-1310 785-1380	126-7 128 130 132 137	Manchuria City Sydney Peru Korea San Jose Track Buford Siberia	176-1436 226-1190 320-1779 255-1890 138-1710 22-900 308-1577 1040-823	11 1232 14 1835 21 0 16 1658 9 168	
		2327 320		Over 162-2025	2490 105	1 1030 20 448	68 134
July 5	Comanche Titania	918-780	144-5	Siberia Arabs	941-1545 1-0	24 735	
July 6	Theobald Offsh. Bunkers	1064-1090	142	Over 24-765	942 1545	30	
July 6	Energy Oakland Bunkers	407 1770	144-5	Sierra Over 130-1875	1195 725	130 1875	
July 28	Nanaimo Terje Viken Offsh. Bunkers Titania	902-200 114-2210 514-1000	1 1	Siberia Track	388-70 21-1590	1 1900	
July 31	Ruth Titania	651 630	5	Over 1-2130 China Doric	1633 5 61 1892	39 1423	
Aug. 2	Theobald Terje Viken Offsh. Bunkers Terje Viken	1077-1140 55-1150 799-1290	3 7	Over 102-632 Mongolia Sonoma	753 1262 55 1510	46 1362	
		1932 1340		Over 16-1082	9373 1004 139 660	7 46 9 1036	
		8833 380			9373 1004 139 660	400 2204	

Date.	Barge	Tons.	Lbs.	Vessel	Tons	Lbs.	Without Drawback. Tons Lbs.	With Drawback. Tons Lbs.
1906								(11)
Aug. 29.	Comanche Offsh. Bunkers Titania	112-130. 830-1080	942	15 Korea Track	938-1690 11-1670	950	1120	224
				Over	7-2150			
Sept. 6.	Melrose Titania	209-950		10 Manchuria	48-1964			
	Offsh. Bunkers	109-2220		12 San Jose	459-522			
	Terje Viken	392-1600		16 City Peking	144-695			
	Titania	192-1481	904	19 Acapulco	293-1684	946	385	
				Over	41-854			41 854
Sept. 14.	Ruth	20-520		20 Sierra	681-1260			63 684
	Offsh. Bunkers	679-60		25 Siberia	738-681	1419	1941	68 1117
	Offsh. Bunkers	63-370		Over	131-1801			
	Offsh. Bunkers	525-1430	1288					
Sept. 20.	Nanaimo	58-260		25 Siberia Track	879-240 14-540	893	780	10 675
	Offsh. Bunkers	824-1710	882	Over	10-1050		375	
Sept. 21.	Ludlow	629-2090		17 Aztec	148-828			
	Terje Viken	69-1400		18 City Panama	260-1061		121	
	Offsh. Bunkers	541-1210	1241	Arabs	1-0			11 930
	Terje Viken			23 Sierra	210-1615			
				26 San Juan	262-260			
				27 China	429-1141	1312	425	59 1394
				Over	71-205			
Sept. 25.	Comanche	365-1810		28 Aztec	100-865		11 299	42 1716
	Yard	66-640	432	City Sydney	385-1360	485	2225	
Sept. 26.	Theobald	47-1790		Over	53-2015			
	Offsh. Bunkers	1023-1040		15 Ventura	838-1743			29 1578
	Titania	55-660		15 Korea	787-198			
	Offsh. Bunkers	713-1160		20 Sierra	645-2006			30 80
	Titania	230-860	3270	25 Siberia	905-311			
	Offsh. Bunkers			27 China	243-1270	3420	1048	90 40
				Over	149-1698			
(330-1850)	Terje Viken	584-1440	8962			9428	1204	11 1019
	Titania	284-1750	391					454 2034
	"	330-1850						

Date. 1906	Barge	Tons.	Lbs.	Vessel	Tons	Lbs.	Without Drawback. Tons Lbs.	With Drawback. Tons Lbs.	(12)
Oct. 4.	Theobald Terje Viken	1052	1740	30 Sonoma Over 81-1797	1134	1297		81 1797 12 186	
Oct. 17.	Ruth Offsh. Bunkers Yard Black Heath	1185	850	27 China Track Tordenskiold Sonoma Strathyre Over 38-1439	30 30	49	1224	1276 3 358 7 449	15 1411
Oct. 18.	Melrose Offsh. Bunkers Black Heath	1021	1170	32 Algoa Newport Doric	32	1150	1090	41 452 7 1613	
Oct. 26.	Comanche Yard Terje Viken	1198	400	34 San Jose Oak. Bunkers Over 68-2220	34	556	1218	20 155 15 156	5 0
Nov. 5.	Ruth Yard Offsh. Bunkers Terje Viken Offsh. Bunkers Tordenskiold Offsh. Bunkers Black Heath	895	640	37 Doric City Panama Selsdon Sheikh Over 20-156 Over 16-1653	37	53	912	2 1481 5 284 4 1912	5 216
Nov. 8.	Melrose Offsh. Bunkers Terje Viken Offsh. Bunkers Black Heath	1599	1100	39 Coptic City Peking Over 36-1738	39	598	1836	23 1099	13 639
Nov. 13.	Melrose Titania	418 7371	2130 1310	41-3 Korea Over 29-1994	41-3	1884 1107	448 7664	29 1994 123 901	169 1136

Date 1906.	Barge	Tons	Lbs.	Vessel	Tons	Lbs.	(13)	
							Without Drawback Tons	With Drawback Tons
Nov. 15	Comanche Tellus Offsh. Bunkers Offsh. Bunkers Titania		611- 700 65- 640 112-1650 130-1159	41-43 Korea Track Over 20-220	927-1830 12- 290	939 2120	580	19 1880
Nov. 17	Theobald Offsh. Bunkers Terje Viken Offsh. Bunkers Tordenskjoeld Sugar Refinery	919	1900	35 Ventura Alert Kirchak 40 Sierra Korea 41-43	723-1278 2-1120 100- 145 558- 322 912- 290	2296 915	381 6 1905	49 1346 38 603 62 1190
Nov. 17	Ruth Tellus Titania	2138	2210	Over 157-945 City Peking City Para Korea Track 39 42 41-43	281-1300 315- 308 351- 260 12- 590	960 218	1 306	88 112
Nov. 22	Ludlow Scregs. fr. B. Scregs. fr. B. How'd St. B. Oak Offsh. Bunkers Offsh. Bunkers	870	2040	Over 89-418 Bunkers Titania Korea Track 44 American Over 43-1602	218-2060 248-1545 55- 243 12-1360 193-1794	13 269 14 2048 3 669 11 1396		
Dec. 3	Melrose Offsh. Bunkers	685	920	46 San Juan 47 Barracouta	330-250 132-505	729 282		
Dec. 4	Ludlow Titania	415	1560	Over 46-1435 Siberia Over 31-1470	382 1190	462 755		46 1435
Dec. 5.	Theobald Titania	350	1960	48 Siberia Over 34-156	660 1886	37 469		31 1470 34 156
		6008	1120		6431 646	37 469		385 1297

Date 1906	Barge	Tons	Lbs.	Vessel	Tons	Lbs.	Without Drawback Tons	Lbs.	With Drawback Tons	Lbs.	(15)
December 20	Nanaimo			China	614-	894			19	576	
	Segs. New Well	67-	110	American	203-	1280			6	852	
	Segs. New Well	757-	2150	Mongolia	843-	1546			26	994	
	Hercules	730-	1490	Track	24-	1550		1734			
	Offsh. Bunkers	77-	1860								
Dec. 21	Melrose			Over 52-1910							
Dec. 24	Tellus	266	428	San Jose	274	1062			8	634	
	Ruth			Over 8-634							
	Titania			Tuscarora	400-	431	28	672			
	Sheik	412-	860	Newport	270-	872			19	270	
	Offsh. Bunkers	343-	320	Mongolia	328-	1122			23	515	
Dec. 26	Tordensjold	53-	200	Sonoma	450-	380	1449	565	31	1868	
	Nanaimo	403-	480								
		134-	2100	Over 102-1085							
	Theobald			Sonoma	761-	2			74	1200	
	Offsh. Bunkers	70-	1630	Bunkers	58-	170	819	172	5	1542	
1907	Offsh. Bunkers	103-	1620	Over 80-502							
	Tordensjold	564-	900								
				City Panama	218-	1580					
	Offsh. Bunkers	118-	0	City Sydney	163-	465	381	2045			
	Titania	235-	1750	Over 28-295					28	295	
Jan. 5	Ruth										
	Offsh. Bunkers										
	Titania										
		4339	218		4611	164	34	1708	237	478	

Date.	Barge.	Tons	Lbs.	Vessel Ventura Over 45-2211	Tons Lbs. 553 1081	Without Drawback Tons Lbs.	(16) With Drawback Tons Lbs.
1907. Jan. 14	Ruth Offsh. Bunkers Offsh. Bunkers Sheila	507	1110	61			45 2211
Jan. 16	Theobald Offsh. Bunkers Offsh. Bunkers Sheila	1041	160	61	1045 1747	291	4 1296
Jan. 17	Melrose Offsh. Bunkers Sheila	746	1580	62		58 1995	9 135
Jan. 23	Theobald Offsh. Bunkers Tellus	451	630	63	533 1637		82 1007
Jan. 31	Nanaimo Sheila Offsh. Bunkers Sheila Titania	1827	870	60 63 64-66		43 2012 1 918	16 823 2 68 63 1301
Feb. 2	Ruth Titania	453	1040	68-69			
Feb. 4	Ludlow Titania	557	1310	64-66	594 1306		59 1732
Feb. 4	Comanche Titania	901	1600	64-66			36 2236
		6486	1580		905 2070	260	4 210
					6916 155	104 996	324 2059

Date 1907	Barge	Tons	Lbs.	Vessel	(19)		
					Tons	Lbs.	Without Drawback Tons Lbs. With Drawback Tons Lbs.
Apr. 17	Theobald Titania	1097	590	86-87 Korea Over 72-898	1169	1488	72 898
Apr. 19	Nanaimo Offsh. Bunks. Coos Bay Segs. do Titania	810	1460	86-87 Korea Over 38-1284	849	504	38 1284
Apr. 20	Comanche Tellus	707	1050	86-87 Korea Over 30- 588	737	1638	30 588
Apr. 25	Ruth Offsh. Bunkers Wellington	16- 0 650-1840		Costa Rica Sildra Eva	149- 578 250- 0 180- 900	18 242 30 739 21 1986	
	Offsh. Bunkers Tordenskjold	87-1600 556- 890	2090	86-87 88 Korea San Juan Sierra	178-1622 165-1111 568- 124	41 1705	
Apr. 29	Nanaimo Offsh. Bunkers Wellington	40-1080 683-1510	724	89 91 Peru Newport	489- 232 280-1584	769 1016	
Apr. 30	Theobald Offsh. Bunkers Tordenskjold	84- 980 1092-1100	2080	Over 45-1466 Abessinia Sierra Siberia	206- 810 631- 469 432- 108	15 147 46 185 1269 1307	45 1466 31 1215
May 4	Melrose Offsh. Bunkers Tordenskjold	167- 820 895-1080	1900	Over 92-1547 Siberia Over 74-1397	1137 1057	74 1397	
		6890	560		7425 1025 200 872 334 1833		

Date	Barge	Tons	Lbs.	Vessel	241- 90	Tons	Lgs.	Without Drawback Tons Lbs.	(20) With Drawback Tons Lbs.
1907									
May 9	Indlow Offsh. Bunkers Comanche Tordenskjold Titania	271-1210 46-2663 461-570 241-1460	85 86- 7 88 95	Coptic Track City Para Korea San Juan Abessinia San Jose	5-1940 49- 844 64- 698 227- 975 94- 188 395-1105	1021	823	4 2039	38 994
May 9	Theobald Offsh. Bunkers Offsh. Bunkers Tordenskjold	63- 0 41-1890 552-1650	92-94 97-99	Over 56-537 Siberia China	734- 894 184-1895	919	549		
May 17	Ruth Offsh. Bunkers Offsh. Bunkers Titania Tordenskjold	27- 700 17- 790 626- 170 285- 330	96	City Panama Sierra Over 47-1865	306- 726 697- 889	1003	1615	33 540	40 639 14 1325
May 18	Comanche Offsh. Bunkers Tordenskjold	41-1890 890- 0	98	Mongolia Over 61-2145		993	1795		61 2145
May 21	Theobald Tellus Offsh. Bunkers Tordenskjold	881- 920 10- 20 394-1650		Strathyre Sierra Over 104-1855	230- 992 1160-1213	1390	2205	17 822 87 1033	
May 22	Melrose Tellus	968 1030 6062 1513	98	Mongolia Over 60-362		1048	1392	155 1938	60 362 215 985

Date	Barge	Tons	Lbs.	Tons	Lbs.	Without Drawback Tons	With (21) Drawback Tons
1907 May 23	Nanaimo Titania Tordenskjoeld	850- 830 799- 440	97-99 98	1649	1270	838-1832 894- 740	
May 29	Ludlow Offsh. Bunkers Offsh. Bunkers Tordenskjoeld Offsh. Bunkers Offsh. Bunkers	7- 720 260- 400 275-1810 173- 280 16- 0	97-99	732	970	511-1376 370-1018	83 1302 86 1772
May 31	Theobald Offsh. Bunkers Hornelen	60- 0 559- 780		619	789	630 1064	11 284
June 4	Nanaimo Offsh. Bunkers Hornelen	80- 30 464- 280	101	544	310	580 1232	36 922
June 29	Comanche Hornelen			899	1310	962 1150	62 2080
July 6	Nanaimo Hornelen			748	670	906 239	157 1809
July 8.	Theobald Tordenskjoeld Offsh. Bunkers Offsh. Bunkers Offsh. Bunkers	412- 210 150- 810 492- 400 25- 0	103 104	1079	1420	328- 49 250-2166 554- 211	11 1821 41 1425
July 16	Ruth Hornelen Offsh. Bunkers Tordenskjoeld	588-1360 62- 300 253-1100	104 2 4	904	520	923 2235	19 1715 85 1757 488 2065

Date	Barge		Tons	Lbs.		Vessel	Tons	Lbs.	Without Drawback Tons Lbs.	With (22) Drawback Tons Lbs.
1907										
July 20	Theobald Offsh. Bunkers Tordenskjold	113- 500 883-2040	997	300	5-6	Siberia Over 51-112	1048	412		51 112
July 22	Comanche Offsh. Bunkers Tordenskjold	99- 40 795- 50	894	90	5-6	Siberia Over 55-1891	949	1981		55 1891
July 24	Melrose Hornelen Offsh. Bunkers Tordenskjold Indiana	466- 80 100-2210 723- 260 640- 803	1930	1113	1 5-6	Bunkers City Para San Mateo Siberia Over 63-2209 China Over 56-98	99-1410 346-1730 640- 640 907-1782	3 440 20 1213	11 280	29 276
July 27	Ruth Offsh. Bunkers Hornelen	47-1410 476-2060	524	1230	1	Persia Acapulco San Jose	580	1328		56-98
July 29	Ludlow Hornelen Tordenskjold Hornelen	401- 770 204- 220 372-1160	977	2150	102 8	Persia Acapulco San Jose	182- 518 416-1453 380-1600	680		1557 1424
July 30	Nanaimo Offsh. Bunkers Tordenskjold Offsh. Bunkers Hornelen	114-2230 737-1970 101-1330 674-1740	1629	550	5-6 7 3	Over 1-1421 Siberia China Peru Over 38-648	313-2136 921-1475 431-2067		38 648	
Aug. 6	Nanaimo Offsh. Bunkers Tellus	150- 870 649-1680	800	310	9	Manchuria Over 67-1843	867	2153	67 1843	
			7753	1263			8088	525	24 93	310 1409

Date	Barge	Tons	Lbs.	Tons	Lbs.	Tons	Lbs.	(24)	
								Without. Drawback. Tons	With Drawback. Tons
1907. Aug. 28.	Ruth Offsh. Bunkers Craighall Offsh. Bunkers Jethon	99-1290 459-1780 50- 900 524-1400	890	1134	Vessel Sierra 17-18 Acapulco Persia Over 57-1943	556-1860 196-1421 438-1792	1192 593	27 58	9 1218
Sept. 13.	Comanche Offsh. Bunkers Tordenskjold	77-1660 493-1710	571	1130	Presia (20-) Korea (21-2)	343-1036 265- 060	610 2096	22 665	17 301
Sept. 19.	Melrose Offsh. Bunkers Tellus Hornelen	142- 560 770- 720 891-1017	57	1804	Over 39-966 Asia 20-1-2 Korea Over 36-2031	830- 114 1010-1974	1840 2088	16 1435	20 596
Sept. 20.	Comanche Offsh. Bunkers Offsh. Bunkers Scottish Monarch	37-1700 49-2040 687-1550	810	775	20-1-2 Korea Over 29-378		804 1188		29 378
Sept. 24.	Theobald Offsh. Bunkers Tellus Scottish Monarch	102-1180 497-2060 937-1890	650	1538	20-1-2 Korea Goat Island Over 154-2139	526- 325 1167-2139	1693 549	106 1908	48 231
Sept. 26.	Ruth Offsh. Bunkers Tellus Scottish Monarch	50- 0 520-1010 443- 440	1450	1013	Sierra 23 City Para 24 Peru Over 47847	451- 824 317- 205 292-1268	1061 57	19 2213	14 1025 12 2089
Sept. 28.	Nanaimo Offsh. Bunkers Jethon Offsh. Bunkers Tordenskjold Offsh. Bunkers Offsh. Bunkers Scottish Monarch	50- 100 480-1550 50- 190 227- 400 44- 10 52- 80 520-1010	1100	1424	24 Peru Persia 20-19 San Juan 1-2 Korea 27 Siberia Over 78-1700	82- 446 313- 44 330- 48 344-2150 433- 112	1503 560	16 896	62 804
		8261	1607	8706	411	230 1122	213 2162		

Date.	Barge.	Tons	Lbs.	Vessel	Tons Lbs.	Without Drawback. Tons Lbs.	With (25) Drawback. Tons Lbs.
1907							
Oct. 3	Comanche Offsh. Bunkers Offsh. Bunkers Indian Monarch	847	2050	27 Siberia Over 108-177	955 2227		108 177
Oct. 7	Theobald Offsh. Bunkers Indian Monarch	1026	30	27 Siberia Over 88-1245	1114 1275		88 1245
Oct. 14	Ruth Offsh. Bunkers Indian Monarch	603	100	26 Newport 29-32 San Jose Over 84-1195	263-735 424-560	687 1296	
Oct. 15	Nanaimo Offsh. Bunkers Strathmairn	700	810	30 China 31-3 Manchuria Over 17-1682	382-1187 335-1305	718 252	84 1195
Oct. 21	Comanche Offsh. Bunkers Koan Maru?	796-	1550	31-3 Manchuria Over 73-1351	870 661	17 1682	73 1351
Nov. 11	Theobald Offsh. Bunkers Strathmairn Koan Maru? Offsh. Bunkers Belle of Ireland	2010	2120	31-3 Manchuria 36 Mongolia Over 53-2186	904-748 1160-1318	2064 2066	53 2186
Nov. 12	Melrose Scottish Monarch Offsh. Bunkers Indian Monarch Offsh. Bunkers Koan Maru? Offsh. Bunkers Offsh. Bunkers Oceano	3742	1190	27 Goat Island 27 Siberia 28 China 31-3 Manchuria 37 Setos 37 Mongolia Over 249-1647	832-2016 182-1542 702-85 688-1762 400-783 1185-1129	52 228 11 959 43 2051 43 195 25 98 3992 597	74 356
		9727	1130		10403 1653	77 326	549 197

Date 1907	Barge	Tons	Lbs.		Tons	Lbs.	(20)	
							Without Drawback Tons	With Drawback Tons
Nov. 20	Comanche Offsh. Bunkers Oceano	303-1840 550- 290	853	2130	37	Vessel Mongolia Persia	497-2048 478- 852	976 160 59 1847
Nov. 28	Ruth Offsh. Bunkers Koan Maru Offsh. Bunkers	53- 980 551-1190 171-1890	776	1820	35 38	Over 122-270 Gasoube City Sydney San Juan Senator	175- 0 98- 920 381-1982 181-2152	12 1420 7 234 27 1275
Nov. 29	Nanaimo Belle of Ireland Offsh. Bunkers Oceano	848-1680 286- 60 525-2070	1660	1570	37 42 & B	Over 60-994 Senegari Asia Mongolia City Para	300- 672 527- 822 644-2055 282- 600	16 250 28 660 34 1347 15 322
Dec. 3	Theobald Boverie Offsh. Bunkers Craigvar	78-2230 123-1100 824- 140	1026	1230	43	Over 94-339 Korea Over 53-554	1079 1784	53 554
Dec. 7	Comanche Offsh. Bunkers Craigvar	120-1310 773-1200	894	270	43	Korea Over 5-118	899 388	5 118
Dec. 18	Theobald Craigvar	39- 300 865-1570	1060	1470	47-48 47-48	Siberia Over 36-67 Siberia Over 26-1606	1096 1537 931 1236	36 67 26 1606
Dec. 20	Nanaimo Offsh. Bunkers Craigvar	128-2000 496-1060 604-1050	1202	2070	46 49	Maekinaw San Jose City Panama Senator	588-1756 335-1418 181-1495 106- 128	33 1072 19 277
Dec. 23	Ruth Offsh. Bunkers Craigvar Titania		8380	1230	Over 66-487		7 1772 5 1846	143 1380 320 815

Date	Barge	Tons	Lbs.	Vessel	Tons	Lbs.	Without Drawback Tons Lbs.	With Drawback Tons Lbs.
1907								(27)
Dec. 24	Comanche			China	759- 80			
	Offsh. Bunkers	68-1700		Siberia	108-1015	867 1095		
	Offsh. Bunkers	15- 0	47-48					
	Hornelen	668-1690	1150	Over 114-2185				114 2185
1908								
Jan. 10	Comanche			Manchuria	988- 24			
	Kelvenbank	863-2200	51	Nippon Maru	522- 741		26 678	49 1686
	Offsh. Bunkers	33-1580		Asia	393- 852	1903 1617	19 1813	
	Marcellus	910- 380	1920					
Jan. 24	Melrose			Over 95-1937				
	Offsh. Bunkers	619- 110	41	Denderah	586-1893		22 301	
	Offsh. Bunkers	101-1840	43	Aztec	522-1875			
	Offsh. Bunkers	126- 110	47-48	Korea	886- 828			
	Boverie	375- 470	50	Siberia	542-1307			117 1062
	Craigvar	858- 650	54	China	125- 500		20 1543	
	Offsh. Bunkers	66-1040		Asia	5481154			
	Hornelen	790- 40		Mongolia	1037-1279	4249 2116		
	Kelvenbank	657- 120		Over 160-666				
	Offsh. Bunkers	93-1590	1450					
	Bankfield	401-2200	4089					
Jan. 27	Comanche			Mongolia		888 2205		
Feb. 4	Bankfield		50	Over 89-2155				89 2155
	Offsh. Bunkers	341- 650	799	Manchuria	818-1440			50 1051
	Kelvenbank	646- 90		Nippon Maru	1130- 27		69 1490	
	Offsh. Bunkers	91- 120		Asia	85- 455		5 565	
	Marcellus	1543-1870		Cambrian King	100-220		6 380	
	Bankfield	286- 50		Hong Kong				
	Offsh. Bunkers	95-1360	3003	Maru	1067- 534	3201 436	65 1790	
				Over 197- 796				
			10452			11111 749 235 1840		422 1419
			1970					

Date		Tons	Lbs.		Vessel.	Tons.	Lbs.	Tons.	Lbs.	Without Drawback	With Drawback
						1036	1363				
1908	Theobald			59	Korea						
Feb. 18	Thyra	888	1020		Over 148-343						148-343
Feb. 22	Melrose	883	2100	59	Korea	1047	1812				163 1952
Feb. 29	Thyra				Over 163-1952						
	Melrose	339-1270		63	America Maru	827-1088		79	1016		29 1402
	Offsh. Bunkers	687-850	2120		Siberia	308-1210	58				
	Riverforth										
Mar. 6.	Theobald	18-570		63	Over 109-178						
	Offsh. Bunkers	1009-370			Siberia	1071	1761			44	821
	Riverforth		940		Over 44-821						
Mar. 11	Ruth	599-750		52	Costa Rica	132-1020		5	1975		13 1762
	Kelvenbank	31-440			Acapulco	310-1301					
	Offsh. Bunkers	444-940		55	Nippon Maru	625-1135		27	1736		9 1917
	Marcellus	589-130		54	City Panama	221-2152					7 1352
	Bankfield	386-1990		59	Mongolia	171-520		6	1491		20 2068
	Offsh. Bunkers	102-700		64	Senator	150-260					27 1845
	Cecil	2153-470			Korea	471-338					
	Offsh. Bunkers	44-810			China	626-1200	2709 1206				
	Riverforth	391-1460	500		Over 120-706						
Mar. 14	Comanche	850-260		62	Siberia	797-523					
	Cecil	206-90		64	China	600-309					
	Offsh. Bunkers	634-1080	1430	66	Manchuria	363-2100	1761 692				
	Gymeric										
Mar. 16	Melrose	1445	370	63	Over 70-1502					70	1502
	Gymeric			64	Siberia	436-1408					
				65	China	263-2086					
				66	San Jose	309-2092					
					Manchuria	538-1013	1548 2119				
Mar. 26	Ruth	551	870	67	Over 103-1749					103	1749
	Offsh. Bunkers				Acapulco	344-570				8	1817
					Malta	221-1383	565 1953	5	1506		
					Over 14-1083						
		10103	390			10877 2004	125 1004			649	610

Date. 1908	Barge.	Tons. Lbs.	Vessel.	Tons. Lbs.	(29)	
					Without Drawback Tons. Lbs.	With Drawback Tons. Lbs.
Mar. 30	Alpine (Schr.) Oriana	199 440	Asia Over 6-0	68	6 0	
Apr. 4	Schr. Carrier Dove Offsh. Bunkers	90 1050	San Juan Over 7-230		97 1280	7 230
Apr. 4	Comanche Offsh. Bunkers L. G. Burgess	111- 660 757- 980	Asia Mongolia	69	596- 573 346- 483	27 196
Apr. 6	Ruth Oriana	868 1640	Over 73-1656 Asia Mongolia	69	41 1600	17 419
Apr. 10	Ruth Offsh. Bunkers Hornelen	209- 840 532-1470	Over 58-2019 Camphill Kelvenbank		23 304 33 1530	
Apr. 10	Theobald Offsh. Bunkers Gymeric Oriana	184-2050 916- 240 794- 360	Over 56-1834 Nippon Maru Mongolia	69	48 1980	75 221
Apr. 18	Comanche Offsh. Bunkers Hornelen	248-1860 690-1800	Over 123-2201 Mongolia Panama City Sidney	69 70 71	299-2029 243- 90 403- 124	6 823
Apr. 21	Ladlow Offsh. Bunkers Oceano Offsh. Bunkers Craigvar Offsh. Bunkers Titania	201- 240 302-1170 84-1500 519-1550 95-1770 309-1240	Over 6-823 City Sidney (1907) City Para Peru Newport Mackinaw Sheridan	39 44 45 B 46	306-2112 62- 743 356- 202 235- 440 129- 318 568-1477	94 2194
Apr. 22	Ruth Offsh. Bunkers Lucile	82-1110 570- 700	Over 144-1112 Sheridan Over 29-772		682 29 772	227 1843
		7519 2220			8026 1767 278 2184	227 1843

Date.	Barge.	Tons. Lbs.	Vessel.	Tons. Lbs.	Without Drawback Tons. Lbs.	(30) With Drawback Tons. Lbs.
1908. May 2-3	Theobald		Hong Kong Maru	910-1773		
	Offsh. Bunkers	282- 960	Korea	1111- 898		
	Kaulani	760- 360			15	1081
	Offsh. Bunkers	86-1180				
	Thor	858-1570	Over 34-841	2022	431	18 2000
May 15	Comanche		U. S. S. Bear	330- 758	2	1639
	Offsh. Bunkers	345-1810	Arabs	1	30	
	Offsh. Bunkers	541-1530	Sheridan	228- 120	1	1988
	Offsh. Bunkers	651-1550	Cape Finisterre	200-1856	1	1480
	Titania	713- 320	Earl of Carrick	250-1510	2	164
May 16	Melrose.		Korea	820- 919		6 1778
	Offsh. Bunkers	325- 190	Peru	439-1834	2271	277
	Thor	789-1820	Over 18-1787			3 1428
	Offsh. Bunkers	127-1330	Korea	652- 567		
	Titania	404- 460	American Maru	387-1214	21	1760
May 21	Comanche		Siberia	704- 19	1743	1800
	Offsh. Bunkers	146- 150	Over 97-240			
	Yeddo	584-1760	Siberia	903	1075	172 1405
			Over 172-1405			
June 1	Nanaimo		Siberia	684- 908		
	Offsh. Bunkers	307-1540	China	846- 973		
	Yeddo	422-2190	Manchuria	215- 400	1746	41
	Offsh. Bunkers	35-760	Over 251-1261			
	Tordenskjold	728-1010				251 1261
June 3	Comanche		China	317-1281		
	Tordenskjold	845 1270	Manchuria	620-1051	938	92
			Over 92-1062			
						92 1062
		8957 1600		9624	1476	621 694
					45	1422

Date	Barge	Tons	Lbs.		Tons. Lbs.	(31)	
						Without Drawback Tons. Lbs.	With Drawback Tons. Lbs.
1908 June 4	Ludlow			Vessel.			
	Offsh. Bunkers		50-420	City Para	322-1582		
	Thor		586-1510	Eir	140-480	8 96	18 1150
	Offsh. Bunkers		120-250	Newport	245-148		14 128
	Titania		360-980	McCulloch	190-1900	10 2122	
June 9	Tordenskjold		377-1750	State of	210-1050	12 167	
	Offsh. Bunkers	1679	184-1550	California	426-1434	5 1674	24 1063
				San Jose	100-400		
				Beaumont			
				Manchuria	145-2226	1782 260	8 840
June 9	Theobald			Over 102-520			
	Offsh. Bunkers		196-120	Siberia	393-1397		17 1713
	Tordenskjold		1303-1220	Strathnairn	190-350	8 1304	
				Acapulco	302-1280		13 1466
	Offsh. Bunkers		30-1270	State of		7 584	
June 18	Offsh. Bunkers		160-2060	California	160-1960	53 259	
	Thor	2123	432-1530	Nippon Maru	1176-2059	2224 326	
	Ludlow			Over 100-846			
	Offsh. Bunkers		177-1550	Sark	100-848	5 1854	
June 23	Thor		313-180	Crook	341-362	19 1807	
	Geo. Wood (SCGS.)	510	20-0	State of		5 1899	
				California	100-1600	542 570	
	Comanche			Over 31-1080			64 1285
	Offsh. Bunkers		114-210	Acapulco	52-2199		
June 23	Thor		809-680	San Juan	298-526		
	Offsh. Bunkers		56-600	Asia	171-458	9 1206	
	Titania	1256	276-890	Mongolia	807-1688	1330 391	
				Over 74-251			
	Theobald			Asia	170-1977	9 2135	
July 16	Offsh. Bunkers		125-860	Mongolia	688-936		40 220
	Titania	1131	1005-1570	Falls of Noneis	261-1850	15 560	
				Logan	79-2050	1201 93	
	Ludlow			Over 69-2143			
	Tordenskjold	501	2160	Korea		623 2156	121 2236
		7203	1200	Over 121-2236		176 1455	323 1141

Date	Barge	Tons	Lbs.	Tons	Lbs.	Without Drawback Tons Lbs.	With Drawback Tons Lbs.
1908 July 22	Melrose Algoa Offsh. Bunkers Tordenskjold Offsh. Bunkers Thor Offsh. Bunkers Titania Tordenskjold	316-779 45-2090 718-310 175-1090 354-2230 110-1980 751-830 359-650	85 92 3	Vessel Manchuria Nippon Maru Mongolia Korea Over 133-1628	581-626 820-831 425-861 1139-301	36 2191	26 467 19 402 51 808
July 27	Theobald Offsh. Bunkers Offsh. Bunkers Tordenskjold Titania	2832 991	1180	2	City Para America Maru Over 52-521	383-1808 1180-2133	12 1818 39 943 1564 1701
Aug. 4	Melrose Offsh. Bunkers Titania Thor	1096 1450	1180	6	America Maru Siberia Over 39-624	418-1120 717-954	14 1102 24 1762
Aug. 5	Theobald Offsh. Bunkers Offsh. Bunkers Thor	1139 620	620	6	America Maru Siberia Braemount Over 23-1265	352-359 630-1446 180-80	7 310 3 1446 12 1749
Aug. 13	Nanaimo Tordenskjold Offsh. Bunkers Titania Offsh. Bunkers Thor Offsh. Bunkers Tordenskjold	1843 2203	1964	3 4 6 9	Korea Peru Falls of Nith Siberia China Over 507 lbs.	145-877 347-1895 100-1224 393-806 857-148	32 95 31 97 252
		8424	1964			8673 2029	147 762

Date	Barge	Tons	Lbs.	Vessel.	Tons	Lbs.	Without Drawback Tons	With Drawback Tons	(34)
1908 Sept. 11	Comanche Titania	92- 272		Asia	328-1500				
	Offsh. Bunkers	51- 30		Mongolia	362-1065				
	Offsh. Bunkers	131- 240		State of	100- 994		9	54	
	Offsh. Bunkers	114-2170		California	451- 672	1242	40	1223	
	Offsh. Bunkers	39-1860		Crook		1991			32 1358
	Offsh. Bunkers	39-1630		Over 111-1579					
	Tordenskjold	662- 930	1131						
Sept. 30	Shasta								
	Rygja		150	Peru		155			
	Pinole		390	Over	5-1047	1437		5	1047
Sept. 29	Rygja		175	Peru		185		9	1198
	Rygja		1840	Over	9-1198				
Oct. 2.	Theobald			Korea		1374		53	969
	Beacon Rock	17- 528		Over	53- 969	1477			
	Offsh. Bunkers	140-1830							
	Offsh. Bunkers	83- 320							
	Titania	1080- 70	1321						
Oct. 2	Ruth		508	Korea		1026		37	727
	Offsh. Bunkers, Sergs.	54 540		Over	37- 727				
	Offsh. Bunkers	118-1700							
	Tordenskjold	470- 920							
	Offsh. Bunkers	73-1640							
	Offsh. Bunkers	110-1920							
	Titania	161- 860	989-						
Oct. 12	Melrose		860	Hong Kong					
	Algoa	227-1392		Maru	915- 600		6	269	
	S. N. Castle	772-2000		Mongolia	410-2076			2	1675
	Yard	584- 710		Crook	640- 835		4	632	
	Offsh. Bunkers	399-1500		America Maru	1039- 534	3005	6	2127	
	Beacon Rock	402-1510		Over	20- 223	1805			
	Offsh. Bunkers, Sergs.	21- 200							
	Titania	577- 990	2985				96	1009	
			6753			6991		141	254
			1112			135		141	254

Date	Barge	Tons	Lbs.	Vessel.	Tons	Lbs.	(35)	
							Without Drawback Tons	With Drawback Tons
1908 Oct. 19	Theobald Offsh. Bunkers Tordenskjoeld	108- 550 898-2020	330	27 America Maru Siberia	722-1149 425- 736	1147 1885	88 1255	52 300
Oct. 26	Nanaimo Tordenskjoeld	180-1397		Over 140-1555 America Maru	198- 485 378-1898		18 364	34 1599
	Offsh. Bunkers Beacon Rock	40- 240 554-1230		San Jose State of			9 390	
	Offsh. Bunkers Thor	116- 210 450-1340		California Sheridan	100- 273 800- 349	1477 765	73 715	
Nov. 6	Nanaimo Offsh. Bunkers Offsh. Bunkers	55- 970 735-1290	20	Over 135- 828 Manchuria Over 34-1405		825 1425	34 1405	
Nov. 7	Comanche Offsh. Bunkers Beacon Rock	118- 200 757- 190		Korea Newport	135-1800 262-1957			
	Offsh. Bunkers Tordenskjoeld	26- 70 363-1580	2040	China San Juan	609-1035 336-1802	1344 2114		
Nov. 7	Melrose Offsh. Bunkers Offsh. Bunkers	236-1187 89- 120		Over 80- 74 China	903- 147 1017-1741		80 74	
	Thor Offsh. Bunkers Titania	627-2020 171-1030 686-1270	1147	Manchuria Over 109- 741	1920 1888		109 741	
Nov. 10	Theobald Offsh. Bunkers Offsh. Bunkers	135- 20 113-1650		Siberia Manchuria Aztec	894-2068 937- 656 51- 985		31 1664 33 549 1 1846	
	Thor Offsh. Bunkers Thor	784-1600 96-1190 758-1030		Hong Kong Maru	1037- 807	2921 36	36 1777	
	Offsh. Bunkers Offsh. Bunkers Offsh. Bunkers	95-1920 42- 700 123-1470		Over 103-1356				
	Offsh. Bunkers do Titania	124- 40 293- 740 249-1760						
		2817	920	9033-2154		9637 1393	226 21	377 1453

Date	Barge	Tons	Lbs.	Tons	Lbs.	Without Drawback Tons	With Drawback Tons	(36) Lbs.
1908 Nov. 11	Ludlow Beacon Rock Titania Tordenskjold Offsh. Bunkers Offsh. Bunkers	551-500 99-1400 101-1170 280-270 46-70	1170	29	1135 1608	5 100 5 113 29 2085	17 268	
Nov. 25	Ruth Offsh. Bunkers Offsh. Bunkers Offsh. Bunkers Tordenskjold Offsh. Bunkers Tordenskjold	55-1510 467-680 50-1230 479-1850 35-0 472-380	1170	22	1678 1823	35 542 50 1685	32 666	
Nov. 25	Nanaimo Offsh. Bunkers Mona Tordenskjold	42-1440 11-560 808-1770	862 1530	36	926 1904	8 422	55 2192	
Nov. 28	Theobald Offsh. Bunkers Offsh. Bunkers	82-1150 732-350	814 1500	36	863 1050		48 1790	
Nov. 30	Ludlow Offsh. Bunkers Tordenskjold	40-1040 847-710	887 1750	34 35	914 53	4 688	10 911 11 1184	
Dec. 8	Ludlow Titania		471 150	40-41	522 1409		51 1259	
Dec. 12	Ludlow Thor		503 30	43	524 1330	4 320	17 980	
			6178 580		6566 217	142 1587	245 290	

Date	Barge	Tons	Lbs.	(37)		
				Tons	Without Drawback Tons Lbs.	With Drawback Tons Lbs.
1908						
Dec. 15	Theobald Offsh. Bunkers Titania	42		Vessel Korea Over 20-1789		
			98-1640 955- 10 1053 1650			20 1789
Dec. 30	Melrose			Hong Kong Maru	43 2067	44 235
	Offsh. Bunkers, Sergs.	37		498- 833 500- 489		
	Offsh. Bunkers		50-1890 128- 330	City Para Angot	6 473	
	Offsh. Bunkers		462-1670	Jupiter	22 169	
	Offsh. Bunkers, Sergs.			Yard	8 388	
	Offsh. Bunkers		32- 370 61-1350	Manning	7 1147	
	Tordenskjold		750- 920	Nippon Maru	88 1317	
	Offsh. Bunkers		52- 230	Over 220-1316		
	Titania		452- 670			
	Offsh. Bunkers, Sergs.		26- 830 264-1650			
	Tordenskjold'		2281 950			
1909						
Jan. 2	Theobald Offsh. Bunkers Offsh. Bunkers Tordenskjold Yard	46		Nippon Maru Siberia Over 21-40	16 1297	4 983
			41- 780 109-2050 944-1640 444- 570	1231-1080 329-1760	1561 600	
Jan. 4	Ludlow Offsh. Bunkers Offsh. Bunkers Offsh. Bunkers Tordenskjold	44 45 48		New Port San Jose Acapulco Over 70-796		70 796
			23-1410 180- 0 190-1240 303- 190	225-1533 387- 258 154-1845	767 1396	
			697 600			
			5572 1520		193 138	139 1563
					5905 981	

Date.	Barge.	Tons. Lbs.	Vessel	Tons. Lbs.	Without Drawback Tons. Lbs.	(40) With Drawback Tons. Lbs.
1909. Mar. 29	Ruth Offsh. Bunkers Tordenskjoeld	5- 622-1280	78	674 1685	42 4	5 401
Mar. 31	Comanche Thor	54-1671 695-1810	77 80	858 1476		108 235
Apr. 1	Melrose Wellington Titania Offsh. Bunkers Offsh. Bunkers	191- 149 107-1650 495- 490 87- 410	77 80	1080 2014		199 1555
Apr. 21	Ludlow Offsh. Bunkers Titania Titania	301-1100 504- 280 328-1660	75 78	1226 1591	22 1376 16 1425	53 230
Apr. 26	Comanche Offsh. Bunkers Titania	86- 960 761-1750	83 84	884 1711	3 1231	33 10
Apr. 27	Nanaimo Titania	841 1320		868 1560	2 1676 24 804	
May 12	Ruth Titania Offsh. Bunkers Offsh. Bunkers Titania	648-2110 28- 560 67- 270 491-1260	84	1301 2048	26 1672 7 734 1 1856	30 306
		6319 810		6896 885	147 1818	429 497

The United States of America.

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Date.	Barge.	Tons. Lbs.	Vessel	196- 90 56- 325 408-1724 675-2144	Tons Lbs.	Without Drawback Tons Lbs.	(42) With Drawback Tons Lbs.
1909 June 21	Ludlow Thor	494- 90 228-1640	San Jose	196- 90			
	Thor	417-1030	Pennsylvania	56- 325			
	Offsh. Bunkers	140-1160	Acapulco	408-1724			27 568
July 2	Theobald	1280 1680	Thomas	675-2144	1335 2043	27 2035	
	Algoa	1078- 475	Over 55-363				
	Algoa	924- 972	Nippon Maru	1028-1251			
	Algoa	906- 297	China	800- 658	21 1492		
July 16	Theobald	2908 1744	City Sydney	243- 354			21 2193
	Offsh. Bunkers		Asia	899- 853	2971 876	18 2167	
July 30	Theobald	1088 1140	Over 62-1372				
	Offsh. Bunkers	123- 210	Mongolia		1112 2086		24 946
	Thor	965- 930	Over 24-946				
Aug. 3	Comanche	1098 790	Mongolia	200-1448			
	Thor	114- 310	Korea	934-1911	1135 1119		
	Wellington	26-2130	Over 37-329				
	Offsh. Bunkers	957- 590	Siberia				37 329
	Thor	848- 890	Thomas	797- 890			
	Offsh. Bunkers	857- 290	Mongolia	824-2014	31 200		30 210
	Thor	791-1100	Newport	363- 70			
	Offsh. Bunkers	141-1090	Korea	241-2194			
	Offsh. Bunkers	21-1080	Over 120-2099	978- 492	3205 1099		59 1689
	Offsh. Bunkers	178-1290					
	Offsh. Bunkers	117-1990					
	Titania	128- 230					
		3084 1240					
		9460 2114			9761 503	99 1414	200 1455

Date.	Barge.	Tons. Lbs.	Vessel	Tons. Lbs.	Without Drawback Tons. Lbs.	(43) With Drawback Tons. Lbs.
Aug. 5	Nanaimo					
	Thor	817- 870	100	Manchuria	678- 135	
	Offsh. Bunkers	112- 20		Amiral Exelmans	241-1318	
	Offsh. Bunkers	49-1060	3	Erna	200-1150	7 942
	Titania	617- 120	6	Peru	396-1027	6 294
	Offsh. Bunkers	483-1380	9	Korea	931- 312	64 72
	Thor	301- 530		San Jose	80-1916	
	Offsh. Bunkers	68- 570	70	Over 77-1308	2528 1378	
Aug. 14	Melrose					
	Algoa	880-1915	1	City Para	371-1855	
	Thyra	1080- 416	99	China	457-2159	6 50
	Thor	583-1550	98	San Juan	334-1875	
				Asia	287- 536	1 645
				Nippon Maru	926-2038	4 366
			10	Pennsylvania	177- 959	
					2556 462	
Aug. 21	Comanche					
	Offsh. Bunkers	56- 960	12	Over 11-1061	930 402	
	Offsh. Bunkers	173-1700		Siberia		40 32
	Offsh. Bunkers	659-2190		Over 40-32		
Aug. 21	Nanaimo					
	Oak, Bunkers	302- 820	11	Thor	277- 0	
	Offsh. Bunkers	118- 80		Siberia	900-1311	3 1278
	Thor	742- 10		Over 15-401	1177 1311	11 1363
Sept. 10	Pinole					
	Yard	175 1590	19	City Sydney	182 340	
Sept. 16	Lowdown			Over 6-990		6 990
	Offsh. Bunkers	117-1460	15	San Juan	297- 357	
	Thor	34- 860	17	City Sydney	223- 260	
	Titania	348-2020	20	City Para	251-1241	
	Offsh. Bunkers	21- 30		Over 19-768	771 1858	19 768
	Titania	230-1200				
		752 1090				
		7976 1191			8146 1271	147 1035

Date	Barge	Tons Lbs.		Vessel	Tons	Lbs.	Without Drawback Tons Lbs.	With Drawback Tons Lbs.
1909 Sept. 20	Nanaimo Offsh. Bunkers Titania Offsh. Bunkers	70-1120 817-2010 376- 40	14	China Oak. Bunkers	371-1738 915-1570	1287 1068	16 901	6 1477
		1264 930		Over 23-138				
Sep. 29	Theobald Offsh. Bunkers Tordenskjoeld Tordenskjoeld	110-1050 28-2200 811-1710	22	Guernsey Mongolia	125- 896 953- 134	1078 1030	14 1782	112 1008
		951- 480		Over 127-550				
Oct. 13	Melrose Offsh. Bunkers Offsh. Bunkers	61-1600 70- 210	22 23 25-26	Mongolia Newport Korea	396-2188 257-1520 910- 400	1564 1868	14 494 9 1847 33 237	
	Thor Titania	989-2200 385-2000		Over 57-338				
		1507 1530						
Oct. 15	Ruth Offsh. Bunkers	603 230	25-26	Korea	Over 32-384	635- 614	3 545	32 384
Oct. 16	Nanaimo Tordenskjoeld Tordenskjoeld	36-1740 842-1720	21 25-26	Erna Peru Korea	50- 662 404- 733 947- 113	1401 1508	26 167 61 166	
	Offsh. Bunkers Titania	26-1840 404-2050		Over 90-878				
		1311 630						
Oct. 18	Ludlow Offsh. Bunkers Tordenskjoeld	38-1640 9- 0		Stanley Dollar Kansas City San Jose	100- 400 300- 272 344- 393	744 1065	5 1277 16 1545	19 313
	Tordenskjoeld Offsh. Bunkers Offsh. Bunkers	400- 700 122-1420 132- 870	28	Over 41-895				
		703 170						
Oct. 21	Comanche Offsh. Bunkers Titania Offsh. Bunkers Offsh. Bunkers Titania Off. Sh. B. Tordenskjoeld	121- 440 809- 970 20-1390 58-1350 292-1230 100- 730 8- 460 385- 260	14 20	China City Para Asia Kansas City Magdala Kansas City	436- 47 86-1878 400- 16 80- 320 480-1302 396-1232	1880 315	23 1200 23 774	25 1848
		1787-1890 8128-1380						

Date.	Barge	Tons	Lbs.		Vessel		Tons Lbs.	Tons Lbs.	(45) Drawback Tons Lbs.
1909 Oct. 29	Comanche Offsh. Bunkers Offsh. Bunkers	53-1630 57-2170			29 30	Pennsylvania Nippon Maru Siberia	128-1493 406-1644 392-750	58 63 18 635	
	Thor	683-1990	795	1310	Over 132-337		927 1614	55 1879	
Dec. 2	Theobald Thor Offsh. Bunkers Wellington	901-1920 78-860 609-970			37	Manchuria Ella Chiyo Maru Asia	492-1299 125-95 633-898 797-100	13 572 67 327 84 1096	52 487
	Offsh. Bunkers	241-640	1830	2150	Over 217-242		2048 152		
Dec. 3.	Mono Offsh. Bunkers		303	120	Kansas City Over 7-0		310 120	7 0	
Dec. 3.	Nanaimo Offsh. Bunkers Thor Offsh. Bunkers Thor	118-1670 740-810 503-1790 853-1190			30	Nippon Maru Siberia Kansas City Chiyo Maru Asia	502-2000 824-898 330-582 549-506 374-956	27 752 34 1983 10 2129 12 928	
	Wellington	279-410	2495	1390	Over 85-1312		2581 462		
Dec. 17	Theobald Offsh. Bunkers	114-1190			43 44	Peru Mongolia	380-1968 1121-336	1502 64	
	Wellington Offsh. Bunkers Offsh. Bunkers Offsh. Bunkers Thor	961-610 207-160 53-1250 51-40 74-1500	1462	270	Over 39-2034			39 2034	
Dec. 27	Nanaimo Offsh. Bunkers Offsh. Bunkers Wellington Offsh. Bunkers Offsh. Bunkers Leelanaw	113-470 118-180 586-0 54-1660 45-680 497-590	1414	1340	45	Newport Kansas City Tenyo Maru Kansas City Over 126-159	292-145 350-979 822-1815 75-800	28 1714 67 638 6 373	23 1914
			8301	2100			8909 1704	390 863	217 981

Date	Barge	Tons	Lbs.	Vessel	Tons	Lbs.	Without Drawback Tons Lbs.	(47) With Drawback Tons Lbs.
1910 Jan. 15	Theobald Offsh. Bunkers Offsh. Bunkers Yard Yard	131-1530 178-240 13-210 689-840	1012 580	47-8 53-4-5-6 Siberia	96-1945 753-638 293-1775 Over 131-1538	1143 2118	86 1604	44 2174
Jan. 19	Melrose Yard Yard Yard	13-2120 5-1930 636-1450	656 1020	53-4-5-6 Siberia	Over 68-1512	725- 292	68 1512	
Jan. 20	Nanaimo Offsh. Bunkers Offsh. Bunkers	41-2030 638-60	679 2090	53-4-5-6 Siberia	Over 44-1289	724- 1139	44 1289	
Jan. 22	Nanaimo Offsh. Bunkers Leelanaw	47-450 427-320	474 770	53-4-5-6 Siberia	Over 47-1219	521 1989	47 1219	
Jan. 23	Ruth Leelanaw	546	870	53-4-5-6 Siberia	Over 142-416	688 1286	142 416	
Jan. 26	Sehr, Pinole	152	800	Kansas City	Over 2-550	154 1350	2 550	
Jan. 27	Camanche El Lobo	596	70	China	Over 39-332	635 403	39 332	
Jan. 28	Ruth Offsh. Bunkers El Lobo	40-1140 313-960	353 2100	Kansas City Sydney	220-1645 175-1024 Over 42-569	396 429	23 1213 18 1596	
		4471	1580			4990 45	112 1127	405 1818

Date	Barge	Tons	Lbs.	Vessel	Tons	Lbs.	Without Drawback Tons	Lbs.	With Drawback Tons	Lbs.	(48)
1910 Feb. 4	Melrose El Lobo	802	1517	58 China City Sydney Chiyo Maru	454- 13 211- 670 170- 252	835	935	6	1494	26	164
Feb. 4	Nanaimo El Lobo	802	2030	57 San Juan Manchuria Chiyo Maru	Over 32-1658 362-1307 279- 378 217- 605	859	50	14	440	41	2060
Feb. 17	Comanche Offsh. Bunkers Offsh. Bunkers Offsh. Bunkers Thor Offsh. Bunkers Tricolor	528- 480 17- 0 63- 90 220- 860 115-2020 383-2120	1328	63 Chiyo Maru City Para Asia	616- 311 438-1388 390-1665	1445	1124	31	1400	35	1120
Mar. 15	Melrose Tricolor Seminole	1102-1898 875- 228	1977	71 Asia Tenyo Maru Pennsylvania	Over 56-260 1011- 358 807-1709 329- 834	2148	661	80 64	399 114	26	262
Mar. 16	Theobald Offsh. Bunkers Thor Offsh. Bunkers Tricolor Offsh. Bunkers Thor	555- 770 389-1820 103- 60 867-1470 63- 360 720-1735	2699	62 Over 170-775 Manchuria Mongolia Korea	912- 527 780-1598 1108-1140	2801	1025			101	1530
Mar. 19	Nanaimo Offsh. Bunkers Offsh. Bunkers Tricolor Offsh. Bunkers Thor	65-1110 122-1090 1115-1880 89- 370 567- 80	9571	61 City Panama Kansas City Peru Dock Heather Newport Korea	263-735 259-1955 382- 9 1- 0 311- 764 845- 991	10152	1529	259	1307	321	634
			1828	64 Over 102-2164							

Date	Barge	Tons Lbs.	Vessel Korea Over 110-543	Tons Lbs. 741 223	Without Drawback Tons. Lbs.	(49) With Drawback Tons Lbs.
1910 Mar. 19	Comanche Seminole Offsh. Bunkers Offsh. Bunkers	176- 330 55-1600 398-2230	69-70			110 543
		630 1920				
Mar. 23	Ruth Offsh. Bunkers Tricolor	27- 10 627- 1980	69-70		10 880 1 342	41 1445
		654 1990		733 1947	25 1770	
Mar. 29	Melrose Offsh. Bunkers Offsh. Bunkers Hazel Dollar Strathay	64- 200 103-2130 709- 760 617-1480	72		63 89 365-1460 771-2150	41 1918
		1495 90		1688 691	88 834	
April 2	Nanaimo Thor Offsh. Bunkers Knight of St. George	799-1620 85-1850 293- 0	73 75-77		2 188	1 1765 2 1903
		1178 1230		1185 606		
Apr. 9	Theobald Strathay Offsh. Bunkers Knight of St. George	1031- 820 221-1790 485-1190	74		36 1300	52 535
		1738 1560		1827 1155		
April 14	Schr. Mono Thode Fagelund		79		3 879	18 1271
		301 1630		323 1540		
Apr. 14	Energy Offsh. Bunkers Thode Fagelund	58-1140 894- 640	78		1 696 8 1261	11 1955
		952 1780		974 1212		
		6952 1240		7474 654	240 1519	281 135

Date	Barge	Tons Lbs.	Vessel	Tons	(51)	
					Without Drawback Lbs. Tons Lbs.	With Drawback Tons Lbs.
1910						
May 25	Melrose Offsh. Bunkers Knight of St. George Offsh. Bunkers	84-1420 946-2200 116-1060	88 Pennsylvania Admiral Fourichon	384-175 300-210	22 1136	28 1807
May 31	Nanaimo Offsh. Bunkers Thor	1148 200 110-210 775-850	Tenyo Maru Over 93-213 Acapulco Korea	557-28 111-686 843-834	41 1750	
June 1	Comanche Offsh. Bunkers	94 91-93	Korea Over 69-460	912 878	69 460	
June 3	Ruth Offsh. Bunkers Thode Fagelund Offsh. Bunkers Offsh. Bunkers	903 2080 600-190 53-710 141-1330 61-980 97-280	Kansas City Strathday Korea Over 36-1166	200-2105 100-200 689-111	7 905 3 1544	8 1038 25 957
June 4	Comanche Offsh. Bunkers Offsh. Bunkers	94 91-93 94 335-690	Korea Over 10-514	345 1204	10 514	
June 21	Theobald Offsh. Bunkers Offsh. Bunkers Offsh. Bunkers	92 95 100 2006 980	Tenyo Maru San Juan City Sydney City Para Nippon Maru Over 178-358	93-924 293-53 599-1562 348-2058 849-1221	7 1380 101 580	
June 21	Comanche Leelanaw	849 580 7082 120	Siberia Over 54-893	903 1473 7532 282	54 893 152 633	297 1769

Date	Barge	Tons	Lbs.		Vessel	Tons	Lbs.	Tons	Lbs.	Tons	Lbs.	Tons	Lbs.	(52) Without Drawback	With Drawback
1910	Ruth	649	1820	97	Siberia	Over 62-1094	712	674	62	1094					
June 23	Leelanaw			91-93-94	Korea	108-295									
June 25	Nanaimo	849-2120		98	City Panama	281-882									
	Leelanaw	376-840	1226	99	City Para	206-610									
	Offsh. Bunkers			77	Siberia	690-1153	1286	700							
July 1	Theobald			103	China	Over 59-2220	961	630	59	2220					
July 1	Offsh. Bunkers		900	103	China	Over 61-590			61	590					
	Ruth	8-0	403		Peru	383-1716	427	1346							
	Offsh. Bunkers	395-530				43-1870									
July 5	Melrose				City Para	Over 24-816			24	816					
	Offsh. Bunkers	1190-1860		102	Siberia	100-1640									
	Offsh. Bunkers	63-1730		101	Newport	574-766									
	Offsh. Bunkers	259-1990	1514	2-104	Peru	393-536	1520	1242							
July 9	Ruth				Manchuria	Over 6-142	520	654	6	142					
July 9	Leelanaw	483	1460	1	Manchuria	Over 36-1434			36	1434					
	Comanche	855	1780	1	Prince George	734-495	860	690	3	1912					
	Leelanaw					126-195				1478					
July 12	Nanaimo			1	Manchuria	Over 4-1150			8	382					
	Leelanaw	780	1180		Chiyo Maru	449-338	794	2214	6	652					
						345-1876									
July 22	Melrose			4	San Jose	Over 14-1034	805	1160							
	Jethan	667	601	5	Pennsylvania	353-1640									
		7481	271			451-1760									
					Over 138-559		7889	350	6	2130	138	559	401	189	

Date	Barge	Tons	Lbs.	Vessel	Tons	Lbs.	Without Drawback Tons. Lbs.	(53) With Drawback Tons Lbs.
1910 Aug. 9	Comanche Offsh. Bunkers Leelanaw	734	370	10-11 Mongolia Over 91-1206	825	1576		91 1206
Aug. 9	Theobald Offsh. Bunkers Offsh. Bunkers Offsh. Bunkers Leelanaw	1926	2190	10-11 Asia Mongolia Over 87-579	2014	529	36 1696	50 1123
Aug. 10	Nanaimo Offsh. Bunkers Leelanaw	845	1080	10-11 Pinole (-) Mongolia	867	117	2 489	19 788
Aug. 11	Theobald Thor	304	430	12 Over 21-1277 Mongolia	318	588		14 158
Aug. 15	Comanche Thor	782	450	15 Over 14-158 Tenyo Maru Korea	824	762	23 1003	18 1549
Aug. 16.	Ruth Segs. Offshore Jap. Segs. Offsh. Thor Offsh. Bunkers Thor	2102	1830	Over 42-312 Tordenskjold Acapulco San Juan City Sydney City Panama Korea	2164	1152	8	53 1562
Aug. 18.	Melrose Offsh. Bunkers Thor	654	420	Over 61-1562 Korea Over 64-2170	719	350		64 2170
Aug. 20	Theobald Offsh. Bunkers Offsh. Bunkers Thor	1093	1610	15 Korea Over 49-712	1143	82		49 712
		8443	1660		8876	676	70 948	362 308

Date	Barge	Tons.	Lbs.	Vessel	Tons	Lbs.	Without Drawback Tons	Lbs.	With Drawback Tons	Lbs.	(55)
1910											
Oct. 11	Melrose, Segs. Offsh. Bunkers	126- 810	25	Manchuria	500-1032				31	784	
	Offsh. Bunkers	482- 370	27	Chiyo Maru	157- 620		9	1910	7	428	
	Leelanaw	297-2180		Acapulco	110- 756		14	452			
	Offsh. Bunkers	89- 790		Banksdale	226-1606		24	1716			
	Leelanaw	671-1760	30	Asia	395- 800				30	2007	
	Offsh. Bunkers	33-1750	29-31	City Sydney	493- 487				3	134	
	Offsh. Bunkers	109-1060	1810	San Juan	48-1890		1932	471			
Oct. 11	Nanaimo Offsh. Bks. Segs. Leelanaw	70- 720 631-1670	28 150 29-31	Over 121-711 Acapulco Asia San Juan	261-1299 436-1067 26-1035		13	1177	8	238	
Oct. 14	Ruth Offsh. Bunkers Leelanaw	59-1650 532-1570	29-31	Over 22-1011 Damara San Juan	567-2181 223-2184		16	439	6	846	
Oct. 21	Ruth Offsh. Bunkers Thor	112- 130 866- 360	33	Mongolia Over 91-439			1069	929	91	439	
Oct. 29	Melrose Offsh. Bunkers Offsh. Bunkers Thor	72-2170 109- 760 706-1128	36 37-38 39	Newport Korea Over 28-575	268-1796 648- 597		917	153			
Oct. 31	Theobald Offsh. Bunkers Offsh. Bunkers Thor	114- 710 175- 200 745- 190	33 37- 1034	Mongolia Camphill Korea Over 145-1714	698-1498 180- 0 301-1316		22	517	86	643	
							1180	574	37	554	
							6615	933	100	1730	
									330	1764	

Date	Barge	Tons	Lbs.	Vessel	Tons Lbs.	Without Drawback Tons Lbs.	With Drawback Tons Lbs.	(58)
1909.								
Dec. 9	Theobald Offsh. Bunkers	248	250	52 Acapulco Over 39-1430	287 1680		39 1430	
Dec. 10	Theobald Offsh. Bunkers	326	1330	53 Manchuria Over 139-2201	466 1291		139 2201	
Dec. 13	Nanaimo Cuzco	271	510	54 City Para Over 33- 828	304 1338		33 828	
Dec. 23	Ruth Cuzco					21 1452		
	Offsh. Bunkers			Belle of Spain 216-1910		14 2217		
	Harpeake	680	1160	56 Matai 150- 350 Asia 257- 8 Pennsylvania 131-2184	755 2212	25 1471	13 392	
1911				Over 75-1052				
Jan. 6	Theobald Offsh. Bunkers			Asia 261-1124		5 667		
	Harpeake			San Juan 316- 778				
	Offsh. Bunkers			55 Pennsylvania 288-1450		33 735		
	Offsh. Bunkers			56 City Panama 190-1684				
	Offsh. Bunkers			57 Mongolia 849- 795				
	Offsh. Bunkers			58 America Maru 467-1565	2374 676	9 1064		
	Offsh. Bunkers	2326	450					
Jan. 10	Theobald			Over 48- 226				
	Offsh. Bunkers	326	20	60 Aztec Over 11- 458	337 478		11 458	
Jan. 11	Comanche	274	1570	59 Newport Over 2-1492	277 822		2 1492	
Jan. 21	Theobald Offsh. Bunkers			61 Korea Over 108- 64	1136 354		108 64	
	M. S. Dollar	1028	290					
		5481	100		5939 2131	77 151	381 886	

Date	Barge	Tons.	Lbs.				(61) With Drawback Tons Lbs.
				Tons	Lbs.	Without Drawback Tons Lbs.	
1911 Apr. 13	Nanaimo Offsh. Bunkers Henley Skipton Castle Offsh. Bunkers Offsh. Bunkers	47- 90 806- 410 758-1120 43-1150 48- 630	83 83- 5 1160	Peru Korea Over 69-686	517- 219 1255-1627	1772 1846	69 686
TABLES E AD Satv,							
Apr. 25	Melrose Titanias	781- 399	Page 119 87	Kansas City Alexander	602-1235 320- 0	922 1235	65 77
Apr. 28	Shasta Wellington	41-1795	822 2194	Over 99-1281 America Maru	1378- 240 110- 700	134 696 10 1683	
	Strathblane Tordenskjold Belle of Scotland Henley	202-1476 957-1519 537-1646 1063- 260	50 88-91- 93	508 Siberia Over 316-1143	1759- 364	3247 1304	171 1004
Apr. 29	Ruth Thor Offsh. Bunkers St. Ronald	2761- 421 87-2230 81-1990	2931 161	Aorangi Siberia Over 103-621	484-1705 667-1076	1152 541	59 1853
Apr. 27	Theobald Offsh. Bunkers Skipton Castle Titanias Offsh. Bunkers	960- 420 88-1740 299-1260 771-1880 777-1780 96-1270	1048 2160	Aztec Korea City Sydney Siberia Over 57-985 Newport Over 15-865	301-1048 684- 945 430- 220 587- 482	2003 455	57 985
June 1	Mono Thor	317 1200	105			332 2065	15 865
		8769 1865				9431 726	111 438 990

Date	Barge	Tons	Lbs.	Vessel	Tons	Lbs.	(62)	
							Without Drawback Tons Lbs.	With Drawback Tons Lbs.
1911 June 2	Melrose							
	Skipton Castle	1011-1300		Manuka	150-540			
	Offsh. Bunkers	46-1740	94	Manchuria	124-856			
	Offsh. Bunkers	47-2210	98	Pennsylvania	164-1520		13	119
	Henley	532-2160	102	Belle of Spain	200-2219		13	410
June 7	Offsh. Bunkers	44-880	104	Aztec	418-215			
	Thor	398-2170	1982	Mongolia	1067-176	1046	2125	1046
	Theobald			Over 142-1786				
	Skipton Castle	419-960	88-91-3	Minuka	150-335		3	930
	Offsh. Bunkers	231-1190	92-95	Siberia	201-111			
June 10	Offsh. Bunkers	93-188	98	China	242-308			22
	Offsh. Bunkers	19-1860	104	Pennsylvania	232-1897		18	133
	Skipton Castle	826-1760		America Maru	793-2092	2049		
	Offsh. Bunkers	111-1300		Mongolia	333-1786	1953		
	Offsh. Bunkers	93-300		Over 44-1001				
June 10	Nanaimo		1909					50
	Titania							1499
	Offsh. Bunkers	769-1570	90-94	Acapulco	138-2191			
	Skipton Castle	96-780	92-95	China	573-68			
	Thor	165-770	100	San Juan	372-2166			
June 30	Offsh. Bunkers	411-2230	94	Manchuria	126-1036			
	Henley	93-1630	101	Panama	150-376		13	671
	Offsh. Bunkers	533-220	105	Matai	385-920			
	Offsh. Bunkers	49-200		Newport	118-89		13	141
	Offsh. Bunkers	45-540	2164	Tenyo Maru	376-1165	1291	2241	1291
June 30	Nanaimo			Over 77-71				
	Offsh. Bunkers	44-1510	111	Kansas City	268-1281			
	Thor	852-1500	109	Korea	749-1650	691	1018	691
			897	Over 120-2161				
		6954	58				71	1011
							7339	597
								120
							313	1788

Date.	Barge.	Tons.	Lbs.	Vessel	Tons	Lbs.	Without Drawback		With Drawback	
							Tons	Lbs.	Tons	Lbs.
1911 July 27	Theobald Offsh. Bunkers Coultsden	1081	860	6 Manchuria Over 32-1332	1113	2192			32	1332
Aug. 9	Comanche Coultsden Offsh. Bunkers	1274	550	8 10 Matai Peru Kansas City	446-498 420-68 452-1683		15	318	29	1381
Aug. 21	Theobald Invincible Crowley's Barge Offsh. Bunkers	1377	310	9 Over 44-1699 Newport American Maru	325-780 1133-1525		63	1399	18	596
Sept. 12	Nanaimo Offsh. Bunkers Offsh. Bunkers Offsh. Bunkers Thor	849	1422	15-16 Over 81-1995 Korea Over 98-1096	948	278			98	1096
Sept. 14	Melrose Coultsden Boverie Offsh. Bunkers Demara Offsh. Bunkers James Nesmith	706	597	15-16 Persia Korea Over 171-2133	878	490	48	802	123	1331
Sept. 22	Theobald Offsh. Bunkers James Nesmith Offsh. Bunkers Crowley's Barge Offsh. Bunkers Offsh. Bunkers Senator	2048	590	13 14 17 18 15-16 19 City Sydney Acapulco Peru San Juan Korea City Panama Shinyo Maru Over 45-2236	146-511 64-2164 384-520 327-992 667-347 100-922 403-1850		8	1947	37	289
		7336	2089		7812	1380	135	2226	341	1545

Date	Barge	Tons	Lbs.	Vessel	Tons	Lbs.	Without Drawback Tons	Lbs.	(65) With Drawback Tons	Lbs.
1911 Sep. 25	Nanaimo Offsh. Bunkers Senator	43- 170 863- 780	906	15-16 20	Korea Siberia	535-1557 448- 441	983	1998		
Sep. 25	Ruth Offsh. Bunkers Tricolor Offsh. Bunkers Offsh. Bunkers James Nesmith Vallejo St. Bunkers. Offsh. Bunkers Offsh. Bunkers Offsh. Bunkers	70-2210 963-1220 160-1520 192-1240 96-2080 200-1140 234- 720 46- 540 10- 0 99-1100	570	Over 77-1048 Arno Aorangi Shinyo Maru Siberia Over 67- 621	Over 77-1048 558-1455 450-1050 594- 540 530-386	17 1214 14 955 18 1480	77	1048		
Sep. 27	Melrose Offsh. Bunkers Vallejo St. Bunkers	80- 790 619- 920	699	19	Shinyo Maru City Panama Over 136-1572	710- 202 126- 840	836	1042	116	113
Sep. 28	Comanche Offsh. Bunkers Offsh. Bunkers Offsh. Bunkers Senator Vallejo St. Bunkers	100-1110 349- 270 44-2010 384-1250 420- 0	1299	20	Matai Shinyo Maru Siberia Over 95- 335	500- 300 327-1545 566-890	34 297 22 813 1394 495	38	1465	
Oct. 3	Theobald Offsh. Bunkers Simla	108- 130 955- 980	1063	20	Siberia Cusco Over 23-2121	962- 991 125- 0	1087-	991	2	1686
Oct. 4	Nanaimo Offsh. Bunkers Simla	65- 2010 773-1200	839	20 22	Siberia China Over 35-1916	331-1120 543-1766	875	646		
			6883				7319	1883	35	1916
								225	2078	210 1055

Date	Barge	Tons	Lbs.	Vessel	Tons	Lbs.	Without Drawback Tons	Lbs.	(66) With Drawback Tons	Lbs.
1911										
Oct. 11	Comanche									
	Offsh. Bunkers	65- 640		21 Kansas City	178-1655					
	Offsh. Bunkers	49-2040		22 China	494- 360					
	Simla	717-1590	832	24 Newport	274-1080	947	855			
Oct. 26	Theobald			Over 114-1065						
	Offsh. Bunkers	101- 350		Thomas	586- 970			42	1820	114 1065
	Amiral Borreson	955-1030		San Jose	325-1010					
				Peru	429-1774					
	Offsh. Bunkers	191- 470		27 City Sydney	376- 233	1717	1747			82 1357
	Bannockburn	344-1200	1592	810						
Nov. 2	Nanaimo			Over 125-937						
	Offsh. Bunkers	50- 910		23 Manchuria	345-1684					
	Offsh. Bunkers	51-670		26 City Panama	256-1586					
	Amiral Borreson	834-1710		29-31 Mongolia	777-1022					48 1612
	Offsh. Bunkers	45-1320		Strathdene	110- 0	1489	2052	3	1980	
	Bannockburn	261- 770		Over 52-1352						
	Offsh. Bunkers	50-1120								
	Offsh. Bunkers	141- 920	1437	700						
Nov. 4	Melrose									
	Offsh. Bunkers	112-2050		22 China	149-1696					
	Offsh. Bunkers	90-2120		23 Manchuria	446- 796					
	Thor	811- 920		29-31 Mongolia	1075-1502	1671	1754			
	Offshore	47- 820		Over 42-664						
	Amiral Borreson	566-1880	1629	1090						42 664
Nov. 18	Nanaimo									
	Offsh. Bunkers	50-1120		30 Acapulco	407- 945					
	Offsh. Bunkers	31-1540		32 Kansas City	204-2070					
	Thor	852- 760		Tenyo Maru	442-1365					
	Offsh. Bunkers	432- 210	1366	1390	Matai	401- 745	1456	645	27 567	
				Over 89-1495						
		6858	1540							
						7283	333	98 1481	325 1792	

Date	Barge	Tons	Lbs.	Vessel	Tons	Lbs.	Without Drawback Tons	Lbs.	(67) With Drawback Tons	Lbs.
1911										
Nov. 28	Ruth			Crown of Castle		100-0				
	Offsh. Bunkers	51	0	Kansas City	21	381-174				
	Offsh. Bunkers	426-930		Korea	34	752-1099			94	1119
	Simla	60-690								
	Offsh. Bunkers	18-250		Over 102-1873						
	Offsh. Bunkers	198-710								
	Amiral Borreson	376-1300	1130							
Dec. 1	Nanaimo			Persia		209-1916	9	189	24	1289
	Offsh. Bunkers	57-120		Korea	34	567-1492				
	Offsh. Bunkers	239-830		Over 33-1478						
	James Nesmith	447-980	743				777	1168		
Dec. 4	Melrose			Celtic King		125-2025				
	Offsh. Bunkers	97-580		Persia		462-1769	18	803		
	Offsh. Bunkers	96-1210		San Juan	33	334-225	67	1076	67	1132
	Thor	704-1140	898	Korea	34	128-1922				
Dec. 4	Wellington			Over 153-771						
	Offsh. Bunkers	148-1790		Nippon Maru		1020-1249	93	1594		
	Amiral Borreson	1425-150		Shinyo Maru		671-240				
	Offsh. Bunkers	46-1810		Korea	34	1050-1106				
	Offsh. Bunkers	87-1760		Over 151-2035						
	Offsh. Bunkers	142-880					2742	355	58	441
	James Nesmith	739-890	2590							
Dec. 4	Comanche			J. L. Luckenback		100-565	41	1802		
	Thor	302-579		Kansas City	32	345-1692			144	387
	Offsh. Bunkers	96-1760		Shinyo Maru		798-1750				
	Offsh. Bunkers	24-390		Over 519-117						
	James Nesmith	212-1160					1244	1766	333	168
	Offshore	90-0	725-							
			1649							
Dec. 12	Melrose			Siberia	36					
	Offsh. Bunkers	73-370		Over 139-29			1107	1519	139	29
	Dunbar	895-1120	968							
			1490							
			7057				8157	822	571	1906
			1239						527	2157

Date.	Barge	Tons	Lbs.	Vessel	Tons	Lbs.	Without Drawback	With Drawback
							Tons	Lbs.
1912								(70)
Feb. 17	Theobald			Cleveland	501-1995		1	1930
	Offsh. Bunkers	159- 480		Oceano	199-2239			1662
	Thor	1344-1600		Thomas	250- 925			2080
	Offsh. Bunkers	112-2150		Oceano	864-2220			
	Thor	193-1480	1810			1817 650	3	468
Mar. 2	Ruth		1230	Over 6-1660				
	Thor	708-1540		Tenyo Maru	549-1068		19	431
	Offsh. Bunkers	27- 450		Magician	62-1205		2	414
	Offsh. Bunkers	138-1900	50	Peru	320- 620			
	Thor	406-1050	51	Newport	295- 646			
			1281	Kansas City	100- 0	1327 1299	3	21 2234
Mar. 5	Wellington			Over 46-839				
	Offsh. Bunkers	31- 290	49	Siberia	1605-1238			
	Offsh. Bunkers	117- 610	52	China	141- 376	1746 1614		
	Thor	1460-1410	1609	Over 137-1544				137 1544
Mar. 9	Nanaimo		70					
	Thor		799	Kansas City	200- 20		9	1293
			1010	China	401-1288			19 1826
				San Jose	238-2212	840 1280		11 1631
Mar. 26	Comanche			Over 41-270				5 1603
	Offsh. Bunkers	841-1060	50	Peru	177-1256			
	Wellington	138- 330	49	Siberia	607- 980			
	Offsh. Bunkers	97- 0		Chiyo Maru	244- 0		1	1739
	Offsh. Bunkers	570- 910	1647	Nile	630- 245	1659 241	4	1319
Mar. 30	Schr. Pinole		60	Over 12-181				
	Offsh. Bunkers	58-2040	58-60	Acapulco		199 1036		22 2216
	Thor	117-1260	176	Over 22-2216				
			7323			7590 1640	47	136
			1650					219 2094

Date	Barge	Tons.	Lbs.	Tons.	Lbs.	Tons	Lbs.	Without Drawback Tons Lbs.	(72) With Drawback Tons Lbs.
1912									
Apr. 27	Ruth	30- 0		53		Vessel	458- 927		
	Offsh. Bunkers	655- 520		55		China	140-2234		9 1222
	Thor	32- 0				San Jose	631-1771		
	Offsh. Bunkers					Buford		10 140	
	Wellington	494- 810	1211 1330			Over 19-1362			
Apr. 30	Comanche								
	Thor		843 330	62		San Juan	136-1380	17 386	28 316
						Sherman	336-1572		
				63		City Panama	226- 742		
				65-66		Newport	188-1818	888 1032	
Apr. 30	Wellington					Over 45-702			
	Offsh. Bunkers	24- 0				Nippon Maru	619-1570	40 442	
	Offsh. Bunkers	36- 200		64		Tenyo Maru	692-1301		12 31
	Thor	1592- 430	1652 630			Korea	392- 472	1704 1103	
May 6	Comanche					Over 52-473			
	Offsh. Bunkers	98-1770		67		Korea		885 2150	52 960
	Ikala	734-1660	833 1190			Over 52-960			
May 10	Melrose								
	Offsh. Bunkers	80- 170		67		Korea	873-1482		
	Ikala	930-1650	1010 1820	69		Kansas City	190- 301	1063 1783	
May 11	Nanaimo					Over 52-2203			
	Ikala	752-1600		67		Korea	435-1685		52 2203
	Offsh. Bunkers	130- 710				Shinyo Maru	415-1220	33 773	69 2154
	Offsh. Bunkers	301- 120	1184 190	70		Peru	436- 212	1287 877	
May 11	Wellington					Over 103-687			
	Offsh. Bunkers	31-2150				Shinyo Maru		1562 1715	
	Offsh. Bunkers	306-2090	1468 520			Over 94-1195		94 1195	
	Ikala	1129- 760							
			8203 1530					8624 152	225 166

Date	Barge	Tons	Lbs.	Vessel	Tons Lbs.	Without Drawback Tons Lbs.	(73) With Drawback Tons Lbs.
1912							
May 20	Comanche Offsh. Bunkers	589	1080	73 Siberia	600 1834		11 754
May 21	Theobald Wellington	981	1610	72 Siberia	999 440		17 1070
May 25	Theobald			74 China	285 1042		82 882
May 27	Wellington	203	160	Over 82- 882			
May 31	Wellington	1007	10	Thomas	1119 1250	112 1240	
	Melrose			Over 112-1240			
	Offsh. Bunkers	33-1570		San Jose	330-1864		
	Offsh. Bunkers	10- 0		City Sydney	358- 238		
	Dartford	673	1880	Over 23- 222			23 222
June 1	Comanche Kohala	503	150	75 China	318-1261		
				78 City Sydney	61-1348		
				79 Manchuria	125-1232	505 1601	
June 18	Melrose Offsh. Bunkers	173-1990		Over 2-1451			2 1451
	Christian Bors	728- 260	10	Nile	645-2019	730	42 383
				San Juan	371- 614	1017 393	
June 24	Wellington Offsh. Bunkers	58-1920		Over 115- 383			
	Christian Bors	1145-1730	1204	Mongolia	750-2159	62 2130	
			1410	Logan	563-1985	1314 1904	
June 25	Comanche Christian Bors	707	2180	Over 110- 494		47 604	
				80 Manchuria	123-1440		45 2055
				81 Acapulco	397- 508		
				Nile	65-1580	5 1775	
				Logan	189-1890	16 1648	
				Over 68- 998			
		6772	1770		7316 304	255 787	287 2227

Date	Barge	Tons	Lbs.	Vessel	Tons	Lbs.	Without Drawback Tons	With Drawback Tons	(74) Lbs.
1912 June 27	Theobald Christian Bors Offsh. Bunkers	1427	690	Thomas St. Michaels Nile Nippon Maru	212-1215 200-890 455-728 652-2065	13 262 12 823 28 224 40 659			
July 27	Nanaimo Christian Bors Thor	1494-	40	Over 93-1968 Newport Tenyo Maru Peru Shinyo Maru	280-188 285-1960 340-2101 645-685		23	626	
July 29	Comanche Offsh. Bunkers Offsh. Bunkers Thor Offsh. Bunkers Offsh. Bunkers	159-510 726-2110 1153-490 57-870 902-920	420	Over 58-414 Gifford Persia City Panama Korea Chiyo Maru Siberia	100-1290 492-0 62-1920 1037-1716 1325-380 110-1760	4 397 20 974 55 89	34	2028	50 706
Aug. 1	Ruth Christian Bors.	651	1130	Over 129-2166 Shinyo Maru Siberia	127-1615 539-286	2 2103	12	908	
Aug. 1	Theobald Offsh. Bunkers Christian Bors Thor	1960	770	Over 15-771 City Panama San Jose Siberia Tenyo Maru Manuka Strathmore	309-214 324-205 534-1596 514-193 154-1190 225-0	25 210 7 1223 11 1174	57	21	
Aug. 31	Comanche Wellington Offsh. Bunkers Offsh. Bunkers Offsh. Bunkers Damara	194-1588 65-2210 479-710 110-2200 684-670	658	Over 101-388 Chiyo Maru San Juan Nile Over 193-1219	1009-0 319-1206 401-671	112 2000 44 2015	95	1684	
		10068	1468			1729 1877	413	741	10660 1674 178 1705

Date	Barge	Tons	Lbs.		(76)	
					Without Drawback Tons Lbs.	With Drawback Tons Lbs.
1912 Oct. 17	Ruth Solveig	665	1530	23	666 1736	2079
Oct. 21	Comanche Offsh. Bunkers Offsh. Bunkers Yard	86-1660 210-1730 233-1040		23	546 2232	16 42
Oct. 24	Theobald Thor Offsh. Bunkers Offsh. Bunkers Yard Offsh. Bunkers Offsh. Bunkers Offsh. Bunkers Offsh. Bunkers Yard	36-1278 60-2000 744-1240 209-720 74-0 896-730 87-2120 254-640		21 22 23 25	334-990 287-948 550-1026 335-1708 60-930 582-435 269-1557	34 896
Nov. 19	Theobald Offsh. Bunkers Offsh. Bunkers	223-2080 861-2050	1890	27 28	7 171 13 1974	44 781
Nov. 20	Ruth Offsh. Bunkers Offsh. Bunkers Wellington	213-83 9-870 413-310	1263	28	1166 1875	9 1719
					5502 2002	115 1044
						105 1037

STATEMENT BY YEARS, SHOWING COAL LADEN ON BARGES, AND DISCHARGED INTO VESSELS
WITH AND WITHOUT BENEFIT OF DRAWBACK.

Year	Debit		Credit		Without Drawback		With Drawback	
	Tons	Lbs.	Tons	Lbs.	Tons	Lbs.	Tons	Lbs.
1906	105126	1859	109938	1516	1000	29	3811	1868
1907	79912	2093	84959	1189	1250	1352	3795	2224
1908	82786	704	87842	1666	1841	1674	3214	1528
1909	66393	501	69785	1147	1082	1913	2309	973
1910	85105	2236	90640	1753	1550	427	3984	1330
1911	76868	1251	82553	1673	2042	277	3643	145
1912	67565	1040	71261	1282	2019	1361	1676	1121
Totals	563759	724	596982	1266	10787	313	22436	229

STATEMENT BY YEARS, SHOWING COAL LADEN INTO VESSELS AND THE VARIOUS COMPANIES OWNING THE SAME (INCLUDING UNITED STATES GOVERNMENT VESSELS), WITH AND WITHOUT BENEFIT OF DRAWBACK.

Year	WITH DRAWBACK.					WITHOUT DRAWBACK.				
	Pac. Mail S. S. Co. Tons	Oceanic S. S. Co. Tons	Amer. Haw. S. S. Co. Tons	Pac. Coast S. S. Co. Tons	Total Tons	U. S. A. Transports Tons	Revenue Cutters Tons	U. S. S. "Jupiter" Tons	Others Tons	Total Tons
1906	2650	1037	466		3811	333	15		650	999
1907	3553	233	1700		3795	316	21		1250	1250
1908	3214	1528	8		3214	1375	22	169	1481	1841
1909	1710	2235			1710	91	20		971	1082
@67¢	11129	1825			12533	55				1913
1909	603	817			616					
1910	3966	104		13	3966					
1911	3643	145			3643					
1912	1676	1121			1676	84			1550	1550
@45¢	9888	2187			9902	370			1957	2042
Total	21018	1772	1270	13	22436	1196	57	22	1649	2019
			132	1398	229	1109	1736	169	9510	10787
			1624							313

(79)

STATEMENT SHOWING AMOUNTS DUE THE GOVERNMENT FROM VARIOUS STEAMSHIP COMPANIES ON
ACCOUNT OF EXCESS DRAWBACK PAID, AND FROM WESTERN FUEL COMPANY ON ACCOUNT
OF UNDERWEIGHING OF COAL SUPPLIED TO UNITED STATES VESSELS.

Company	Tons	Pounds	Rate of Drawback	Amount
Pacific Mail S. S. Co.	11129	1825	.67	\$7456.98
Pacific Mail S. S. Co.	9888	2187	.45	4450.04
Oceanic S. S. Co.	1270	2166	.67	851.55
Am. Haw. S. S. Co	132	1824	.67	88.92
Pacific Coast S. S. Co.	13	1387	.45	6.12
			Estimated	
			Value	
U. S. A. Transports	1196	1109	\$7.00	\$8375.50
U. S. Revenue Cutters	57	1736	7.00	404.25
U. S. S. "Jupiter"	22	169	7.00	158.90
Total Due				<u>\$21792.26</u>

SUMMARY:

	Tons	Lbs.	(80)
Total tons discharged from barges, Jan. 1, 1906, to Nov. 20, 1912	596982	1266	
Total tons laden on barges Jan. 1, 1906, to Nov. 20, 1912.....	563759	724	
Excess discharged from barges over amount laden on same.....	33223	542	
With Benefit of Drawback Segregated as Follows:			
Total excess tons alleged to have been discharged from barges and laden on vessels with benefit of drawback under Tariff Act of 1897.....	12533	1135	
Total excess tons alleged to have been discharged from barges and laden on vessels with benefit of drawback under Tariff Act of 1909.....	9902	1334	
Without Benefit of Drawback Segregated as Follows:			
Total excess tons alleged to have been laden on board U. S. A. Transports.....	1196	1109	
Total excess tons alleged to have been laden on board U. S. Revenue Cutters.....	57	1736	
Total excess tons alleged to have been laden on board U. S. "Jupiter".....	22	169	
Total excess tons alleged to have been laden on other than United States vessels.....	9510	1779	
Totals.....	33223	542	
Value of drawback on excess tonnage under Tariff Act of 1897.....	Tons	Lbs.	
Value of drawback on excess tonnage under Tariff Act of 1909.....	12533	1135	
Value of excess tons alleged to have been laden on U. S. A. Transports.....	9902	1334	@ 67¢ \$8397.45
Value of excess tons alleged to have been laden on U. S. Revenue Cutters.....	1196	1109	@ 45¢ 4456.16
Value of excess tons alleged to have been laden on U. S. "Jupiter".....	57	1736	(Est. @ \$7 per ton).... 8375.50
Value of excess tons alleged to have been laden on other than above without benefit of drawback..	22	169	(Est. @ \$7 per ton).... 404.25
Totals.....	9510	1779	(Est. @ \$7 per ton).... 158.90
Totals.....	33223	542	\$21792.26
			158.90
			21633.36

[U. S. Exhibit No. 125—Table "D"—Statement of Percentage of Shortage in Coal from
April 1, 1906 to December 31, 1912.]

STATEMENT SHOWING PERCENTAGE OF SHORTAGE IN COAL IMPORTED INTO THE UNITED STATES BY THE
WESTERN FUEL COMPANY FROM APRIL 1, 1906 TO DECEMBER 31, 1912.

Invoice Weight as per Summary

Deduct sum of outright purchases, in which Invoice Weight is stated as the same rule ascertained
weight

2159551—1147

232990—599

1926561—548

Invoice weight of Imports,

Shortage as per summary
Overage " " "

26044—1965
5324—1291

20720—674

Percentage of Net Shortage

1 7/100

[Endorsed]: Table "D." No. 5233. U. S. v. Howard et al. U. S. Exhibit No. 125. Francis Krull, Deputy Clerk.

No. 2576. U. S. Circuit Court of Appeals for the Ninth Circuit. U. S. Exhibit 125, Table "D." Received March 4, 1915,
and Filed. F. D. Monckton, Clerk.

[U. S. Exhibit No. 126—(Part of)—Summary of Coal Discharged from "Thor" During April 1912.]

WESTERN FUEL CO.

Summary of N. Wellington Coal Discharged ex "Thor"

Date.	Folsom St. Wharf, April, 1912.				Off Shore		Remarks
	No. 1, Hoist Tons Pounds	No. 2, Hoist Tons Pounds	No. 3, Hoist Tons Pounds	No. 4, Hoist Tons Pounds	Yard Bkrs. Tons Pounds	Tons Pounds	
April 10	199 2150	194 510	184 1540	179 1140		592 370	Bge Comanche
" 11	573 1710	553 2190	593 1720	545 1800		166 490	Offshore Bunkers
" "						265 1440	do.
" 12	568 470	525 890	527 890	469 1330		250 2200	Bge Comanche
" "						533 1660	" Melrose
						843 160	" Theobald
						250 190	Ship Paramita
						166 2100	Bge. Theobald
						502 200	" Nanaimo
" 13	393 1660	498 600	543 780	554 200		450 1730	Ship St. Katherine
Total.	1735 1510	1771 1950	1849 450	1748 2230		233 1030	Offshore Bunkers
						264 840	do.
						239 250	Bge. Nanaimo
						35 1830	Stmr. Scotia
						4794 1050	Total

Invoice 7160
Discharged 7105/1660
Short 64/ 580

Vessels Draft Ford

Aft

Finished 9 P. M.
Sailed 9 30 "

E. MAYER,
Weigher.

[Endorsed]: No. 5233. U. S. v. Howard et al. U. S. Exhibit No. 126. Francis Krull, Deputy Clerk.
No. 2576. U. S. Circuit Court of Appeals for the Ninth Circuit. Part of U. S. Exhibit 126. Received and Filed Mar. 4, 1915. F. D.
Monckton, Clerk.

WESTERN FUEL CO.

N. Wellington Coal Discharged ex "Thor"

DAILY REPORT.

	Tons	Lbs.		July 21st, 1910. Tons	Lbs.
No. 1 Hoist { Clean			To Wharf Bunker		
{ Average	113	1920	" Yard	224	2150
{ Screenings			Bge Ruth	113	1920
No. 2 Hoist	124	1060	"		
No. 3 Hoist	100	1090	"		
No. 4 Hoist			"		
Melrose Hoist			"		
Total	338	1830	Total	338	1830

Invoice.....

Discharged 338/1830

Balance.....

E. Mayer, Weigher

WESTERN FUEL CO.

N. Wellington Coal Discharged ex "Thor"

DAILY REPORT.

	Clean	Average	Screenings	Tons	Lbs.	To Wharf	Bunker	Yard	Bge Ruth	Offshore	Bunkers	July 22d, 1910.	Lbs.
No. 1 Hoist	356	310	.....	.....	.....	.....	.....	.....	168	1570
No. 2 Hoist	436	1110	.....	.....	.....	.....	.....	.....	875	550
No. 3 Hoist	317	1130	.....	.....	.....	.....	.....	.....	339	170
No. 4 Hoist	289	2120	.....	.....	.....	.....	.....	.....	17	140
Melrose Hoist
Total	1400	190	.....	.....	.....	.....	.....	.....	.....	.....
Invoice 7359
Discharged 1738/2020
Balance 5620/220

E. Mayer, Weigher

WESTERN FUEL CO.			DAILY REPORT.		
N. Wellington Coal Discharged ex "Thor"			Tons	Lbs.	
No. 1 Hoist	Clean	To Wharf Bunker
	Average	" Yard
No. 2 Hoist	Screenings	357	1660	
		" Offshore Bunkers
No. 3 Hoist		400	690	
No. 4 Hoist		353	1920	"
Melrose Hoist		330	2060	
		"
Total			1442	1850	
Invoice 7359			Total
Discharged 3181/1630			
Balance 4177/610			Total
			
			Total
			
			Total
			
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WESTERN FUEL CO.

N. Wellington Coal Discharged ex "Thor"

DAILY REPORT.

	Tons	Lbs.	To Wharf Bunker	July 25th, 1910.
No. 1 Hoist { Clean			" Yard	Tons Lbs.
Average	379	1680	" Offshore Bunkers	123 1300
Screenings			"	953 420
No. 2 Hoist.	424	1440	"	379 1680
No. 3 Hoist.	328	1390	"	
No. 4 Hoist.	323	1130	"	
Melrose Hoist.			"	
Total	1456	1160	Total	1456 1160
Invoice 7359				
Discharged 4638/550				
Balance 2720/1690				

E. Mayer, Weigher

WESTERN FUEL CO.

DISCHARGING REPORT.

Vessel "Thor"		Folsom St. Wharf.		San Francisco, July 21st, 1910.				N. Wellington Coal.	
Tower No.	Foreman	Engineer	Kind of Coal	Hours	No. of Tubs	Tons Hoisted	Average per Tub	Labor Cost	Average per Ton
1	Kramer	Smith	N. Well.	40		113 1920		21 40	19+
2	Carlson	Stelow	"	40		124 1060		21 40	17½+
3	Figroid	Green	"	40		100 1090		21 40	21+
4									
"Melrose"									
Total.....						338 1830		\$64 20	19+
Remarks									

E. Mayer.

WESTERN FUEL CO.

DISCHARGING REPORT.

Vessel "Thor"	Foreman	Engineer	Kind of Coal	Folsom St. Wharf.		San Francisco, July 25th, 1910.			
				Hours	No. of Tubs	Tons Hoisted	Average per Tub	Labor Cost	Average per Ton
Tower No. 1	Kramer	Talford	N. Well.	90		379 1680		48 35	12½+
" 2	Carlson	Strelow	"	90		424 1440		48 35	11+
" 3	Figroid	Green	"	90		328 1390		48 35	14½+
" 4	Usdom	Smith	"	90		323 1130		48 35	14½+
"Melrose"									
Total.....						1456 1160		\$193 40	13+
Remarks									

E. Mayer.

WESTERN FUEL CO.

DISCHARGING REPORT.

Folsom St. Wharf.

Vessel "Thor"

San Francisco, July 26th, 1910.

Tower No.	Foreman	Engineer	Kind of Coal	Hours		Tons Hoisted
				No. of	Tubs	
1	Kramer	Talford	N. Well.	40		127 1040
2	Carlson	Strelow	"	56		251 170
3	Figroid	Green	"	50		229 1200
4	Usdom	Smith	"	50		216 360
"Melrose"						

Total.....	<u>824</u>	<u>530</u>	
Remarks		\$101 65	
		<u>12 +</u>	E. Mayer.

[U. S. Exhibit No. 128—Daily Reports of Coal Discharged from "Thor" During July, 1910, and Summary Thereof.]

WESTERN FUEL CO.

Summary of N Wellington Coal Discharged ex "Thor"

Summary of N Wellington Coal Discharged ex "Thor"																		
Date.	No. 1, Hoist		No. 2, Hoist		No. 3, Hoist		No. 4, Hoist		Folsom St. Wharf, July, 1910.		Total		Yard Bkrs.		Off Shore		Remarks	
	Tons	Pounds	Tons	Pounds	Tons	Pounds	Tons	Pounds	Tons	Pounds	Tons	Pounds	Tons	Pounds	Tons	Pounds		
1910																		
July 21	113	1920	124	1060	100	1090					338	1830	224	2150	113	1920		
"	22	356	310	436	1110	317	1130	289	2120		1400	190	168	1570	875	550	Bge. Ruth.	
"	23	357	1660	400	690	353	1920	330	2060		1442	1850	249	730	835	1700	do.	
"	25	379	1680	424	1440	328	1390	323	1130		1456	1160	123	1300	953	420	Offshore Bunkers	
"	26	127	1040	251	170	229	1200	216	360		824	530	696	1730			do.	
Total.	1334	2130	1636	2230	1330	10	1160	1190			5462	1080	1238	850	2889	340	1334	2130
Balance Discharged at W. F. Co., Oakland																		

Balance Discharged at W. F. Co., Oakland

Date	No. 1 Hatch	No. 2 Hatch	No. 3 Hatch	No. 4 Hatch	Total
21	113 1920	124 1060	100 1090		338 1830
22	356 310	436 1110	317 1130	289 2120	1400 190
23	357 1660	400 690	353 1920	330 2060	1442 1850
25	379 1680	424 1440	328 1390	323 1130	1456 1160
26	127 1040	251 170	229 1200	216 360	824 530
<hr/>					
	1334 2130	1636 2230	1330 10	1160 1190	5462 1080
<hr/>					
Vessels Draft For'd					
	Aft				
Invoice	7359				
Discharged	1080			Finished	
Bal.	5462			Sailed	
	1896				
	<u>1000</u>				

Invoice 7359 Vessels Draft For'd

Discharged 1080
Bal. 5462 1000
1896

E. MAYER,
Weigher.

[Endorsed]: No. 2576. U. S. Circuit Court of Appeals for the Ninth Circuit. U. S. Exhibit 128. Received and Filed Meh. 4, 1915.
F. D. Monckton, Clerk.
No. 5233. U. S. v. Howard et al. U. S. Exhibit No. 128. For Identification. Francis Krull, Deputy Clerk.

**[U. S. Exhibit No. 130—Additional Exhibit “C”—
Statement Showing Coal Laden on Barges, Dis-
position Thereof, and Excess Weighed Out of
Barges, etc., During 1904 and 1905.]**

Western Fuel Case. Drawback. 1904–5. Addi-
tional Exhibit “C.”

[Endorsed]: No. 2576. U. S. Circuit Court of Ap-
peals for the Ninth Circuit. U. S. Exhibit 130.
Addl. Ex. “C.” Received and filed March 4, 1915.
F. D. Monckton, Clerk.

		Debit			Credit				Without Drawback		With Drawback	
Date	Barge	Tons	Lbs.	Total	Vessel	Tons	Lbs.	Total	Tons	Lbs.	Tons	Lbs.
1904												
Jan. 2	NANAIMO											
	Oak Bnks.	162	630		Sierra	842	305				23	1996
	Wm. Tillie	751	60		Buford	931	2010	1774	75	26	879	
	Pac. Coast Co.	810	890	1723 1580		Over 50-735						
Jan. 4	COMANCHE											
	Oak. Bnks.	751	—		Siberia	865	230				22	2144
	" "	100	280	851 280	Track	9	500	874	730	546		
Jan. 5	LUDLOW					Over 23-450						
	Titania	425	1444	425 1444	Siberia	430	153				4	949
Jan. 6	THEOBALD					Over 4-949		430	153			
	Wyefield	996	2154		Oak. Bnks.	746	2140				24	1387
	Alcinous	628	1420		Korea	858	790					
	Andorinha	977	1714		China	674	944					
	Oak. Bnks.	163	—		San Jose	272	170				83	1349
	Titania	350	448	3316 1256	Acapulco	288	423					
					Para	433	989					
					Coptic	146	364	3429	1340	4	1828	
					Over 113-84							
Jan. 7	COURSEUR					Over 463-3	630				9	1166
	Titania	625	1084	625 1084	Siberia	463	630					
					Track	3	1210					
					Coptic	171	1760	638	1360	3	1350	
					Over 13-276							
				6942 1164		204	254	7146	1418	304	254	

Date.	Barge.	Tons. Lbs.		Tons. Lbs.		Tons. Lbs.		Without Drawback Tons Lbs.	Page 2 With Drawback Tons Lbs.
1904 Jan. 9	NANAIMO Port Caledonia	756	284	756	284	781	1250	25- 966	25- 966
Jan. 13	LUDLOW Vendee	728	780	728	780	676	585	73-1752	15- 933
" 13	COURSER Vendee	624	1860	624	1860	141	640		
" 26	LUDLOW Vendee	882	1050			218	790		
Feb. 1	THEOBALD Longship	670	210	1052	1260	414	1740		
		1080	838	1080	838	11	1050	19 1720	
						313	1348	46 1888	
						785	1800		
						46-	1888		
						462	2024		
						254	180		
						380	1228		
						17-	354		
						Over			
						198	993		
						182	2200		
						15	933		

Date	Barge	DEBIT.		Total	Vessel	CREDIT			Without Drawback Tons Lbs.	Page 4 With Drawback Tons Lbs.
		Tons	Lbs.			Tons	Lbs.	Total		
1904 Feb. 29	COURSER	22	2030		China	210	2050			3 996
	do Georgie Wood	93	140		Sierra	271	407			4 970
	Wyefield	498	340		Clovering	282	895		4 1382	
	Oak. Bunk.	83	840		Logan	118	1898		1 2112	
	do	171	920	868 2030	Over 14-980			883 770		
Mar. 4	MELROSE									
	Titania	161	170		San Juan	169	2194			8 854
	Port Caledonia	292	710		Gaelic	890	1702			
	Zinita	477	1129		Doric	867	1903		86 1577	
	Longships	107	1980		Over 95-191			1928 1324		
	Wyefield	57	1925							
	Shasta	60	—							
	Titania	602	1324							
	Wyefield	74	615	1833 1133						
	THEOBOLD									
Mar. 4	Wyefield	1054	1091	1054 1091	Doric	464	1482			
					Algoa	673	206	1137 1688	83 597	
					Over 83-597					
15	THEOBOLD									
	Titania	568	410		Siberia	632	1028	632 1028	23-1768	23 1768
	Alpine	(25	1090		Over 23-1768					
		(15		608 1500						
				4365 1274		216	1296	4582 330	176 1188	40 108

Date 1904	Barge	DEBIT		Total Tons Lbs.	Vessel	CREDIT		Total		Without		Page 5 With Drawback Tons Lbs.
		Tons	Lbs.			Tons	Lbs.	Tons	Lbs.	Tons	Lbs.	
Mar. 16	NANAIMO											
	Shasta	31	940		5 China	177	965					
	Titania	271	1310		6 City of Panama	240	336					8 770
	Off Shore	401	1050		8 Acapulco	312	1611					
	Bunkers	39	690		10 Siberia	949	1460					
	Titania	941	910	1685 420	Track Over	13	1450	1693	1342	152		
						8-	922					
Mar. 21	COURSER											
	Titania	611	120		9 Peru	408	1653					14 1955
	Wyefield	366	1920	977 2100	12 Sonoma	606	285	1014	1938			22 123
Mar. 22	COMANCHE											
	Wyefield	949	2120	949 2120	13 Siberia	385	760					
					14 San Juan	308	1765					
					15 Colon	267	1590	961	1875			11 1995
					Over	11-	1995					
" 22	LUDLOW											
	Titania	702	770	702 770	13 Siberia	643	1071					
					15 Colon	80	1244	724	1075			
					Over	22-	305					22 305
" 26	LUDLOW											
	Titania	531	2010	531 2010	Coptic	557	1674	557	1674	25	1904	
					Over	25-	1904					
" 29	MELROSE											
	Titania	953	928		Algoa	933	905)					
	Wyefield	213	737		Coptic	236	753)					
	Alpine	40	-		City of Sydney	479	81	1648	1739	24	1453	10 219
	Titania	407	642	1614 67	Over	34-	1672					
Apr. 6	COURSER											
	Titania	502	1716		Coptic	456	560			13	1907	
	Wyefield	487	240	989 1956	Newport	339	2160					10 717
					Ventura	224	1456	1020	1936			6 1836
					Over	30-	2220					
				7451 483		170	2136	7622	379	64	936	106 1200

Date 1904	Barge	DEBIT		Total Tons Lbs.	Vessel	CREDIT		Total Tons Lbs.	Without Drawback Tons Lbs.	With Drawback Tons Lbs.	Page 7
		Tons Lbs.	Tons Lbs.			Tons Lbs.	Tons Lbs.				
Apr. 22	NANAIMO Wyefield	892	160	892 160	Gaelic	952 1851 Over 60-1691	952 1851	952 1851	60	1691	
23	THEOBOLD Wyefield	599	810	599 810	Gaelic	626 1580 Over 27-770	626 1580	626 1580	27	770	
28	LUDLOW Wyefield	769	347	769 347	Sierra	774 1190 Over 5-843	774 1190	774 1190			5 843
May 6	LUDLOW Titania	652	90	652 90	China	658 1140 Over 6-1050	658 1140	658 1140			6 1050
13	COURSER Titania	626	580	626 580	China Track Sheridan	259 995 10 505 382 2129 Over 26-809	259 995 10 505 382 2129	652 1389	924 15 1055		10 1070
				3538 1987			126 683	3665 430	103 2200	22 723	

Date	Barge	Tons Lbs.	DEBIT Tons Lbs. Total	CREDIT	Without Drawback Tons Lbs.	With Drawback Tons Lbs.
1904						Page 8
May 20	COMANCHE					
	Titania	70	432	Vessel	Total	
	Wyefield	619	2218	Sheridan	Tons Lbs.	
	Titania	871	100	Oak. Bkrs.	682 224	
23	NANAIMO		1561 510	Over 50-2054	930 100	21 1205
	Titania	790	320		1612 324	29 849
26	LUDDLOW		790 320	Doric	861 865	71 545
	Wyefield	647	20	Over 71-545		
	Melrose	585				
	Titania	610	500	China	567 2009	
	Off. Sh. Bkrs.	244	700	Sonoma	1078 819	19 765
June 2	COURSER		2086 1220	Doric	513 1905	36 1628
	Melrose—			Over 73-1273	2160 253	17 1120
	Wyefield	485	523	Peru	456 1878	
	Titania	483	1050	San Juan	365 126	
June 4	Wyefield	322	1220	City of Sydney	496 1581	
	LUDLOW		1297 553	Over 21-792	1318 1345	
	Wyefield		692 910	Siberia	721 340	21 792
				Over 28-1670	721 340	
			6427 1273		245 1854	28 1670
					887 139	106 375

Date 1904	Barge	DEBIT		Vessel	CREDIT		Without Drawback Tons Lbs.	With Drawback Tons Lbs.	Page 9
		Tons Lbs.	Total Tons Lbs.		Tons Lbs.	Total Tons Lbs.			
June 10	COMANCHE Wyefield	901 1010	901 1010	40	944 1190	944 1190		43 - 180	
June 11	LUDLOW Titania	610 970	610 970		616 1727	616 1727	6 757		
" 15	MELROSE Titania	272 1989		36-7	603 1263				
	Melanope	378 1530		39	369 84			36 1128	
	Wyefield	420 790		Coptic	867 2152	1840 1254	32 1293		
" 18	TITANIA	699 1244	1771 1073	Over 89-181					
	COURSER								
	Titania	534 1710	534 1710	43	600 20	603 20	750	67 2040	
21	LUDLOW Wyefield	655 1160	655 1160		340 759				
				43	371 95	711 854			
				44	Over 55-1934			55 1934	
July 3	THEOBALD Titania	1005 1700	1005 1700	48-2	1007 1680	1007 1680		1 2220	
July 3	MELROSE Wyefield	776 780	776 780	48-2	887 1996	887 1996		111 1216	
" 6	COMANCHE Offsh. Bnks. Wyefield	528 890		46	560 1582			20 765	
		404 1920	933 570	Over 35-292	407 1520	968 862	14 1767		
		<hr/>			391 610	7580 623	54 87	337 523	
		7189 13							

Date	Barge	Tons	Lbs.	Vessel.	Tons	Lbs.	Without Drawback Tons. Lbs.	Page 10 With Drawback Tons Lbs.
1904								
July 9	LUDLOW Wyefield	634	1400	Gaelic Over	689	1304	34 2144	
" 11	NANAIMO Titania Offsh. Bnkr. , Wyefield Wyefield	593 285 520 696	2210 880 54 1480	Sherman City Panama Acapulco Korea Track Gaelic Over	729 1781 264 368 481 15 380 43-1187	1781 137 1372 350 121	14 1893	20 1393
" 18	NANAIMO Offsh. Bnkr. , Titania	69 792	1470 1990	Mongolia China Over	378 498 14-270	160 1330 1490	8 121	
Aug. 2	COURSER Wyefield Offsh. Bnkr. , Titania Wyefield	595 40 483 461	1170 110 1370 2130	Korea Barracouta Mongolia City Sydney China Over	326 225 448 427 239 86-838	1164 600 1824 600 1430 1138	14 270	
Aug. 18	LUDLOW Lord Templeton Offsh. Bnkr. , Titania Wyefield Titania Wyefield Offsh. Bnkr. , Wyefield	599 30 599 319 305 40 559	15 — 1660 1996 320 100 1600	Mongolia San Juan China Ventura Doric Aztec Over	584 1977 516 304 598 401 364 107-1446	1977 47 1127 1216 970 1800 417	86 838	65 1340 25 360
		3452	1211			2560	16 1966	
		7646	2015			7933	74 1644	211 1981

Date	Barge	Tons Lbs.	Vessel	Tons Lbs.	Without Drawback Tons Lbs.	Page 12 With Drawback Tons Lbs.
1904 Sept. 24	LUDLOW Wyefield	716 1010	26 Korea Track 29 Sonoma OVER	349 2139 8 1530 388 62 30 471	786	14 360 15 1565
Oct. 1-2	COURSER Titania Offsh. Bunkers Wyefield Titania do	612 465 310 20 25 1690 439 173 602 1299	13 14 25 32 18-33 NEWPORT Ventura Acapulco Ok. Bunkers. San Juan Siberia Track OVER	324 1875 435 839 157 2206 422 200 346 456 354 1230 10 1990 62 - 669	13 400	35 1840
4	COMANCHE Titania	954 1830	18-33 Siberia OVER	976 519 21 - 929	13 669	
7	NANAIMO Wyefield Titania Offsh. Bunkers. Titania Wyefield do Titania	267 530 577 990 255 482 1810 344 1348 159 1040 588 1326	17 18-33 21 27 29 34 18-33 37 Cy. Peking Siberia Cy. Panama Barracouta Sonoma Cy. Sydney Siberia Newport OVER	747 1254 300 1885 234 1610 183 295 490 1124 400 1521 82 350 275 109 28 - 1344	21, 929	23 929 5 415
		6342 1081		142 1173 6453	13 1455	128 1958

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James B. Smith et al. vs.

Date	Barge	Tons Lbs.		Vessel	Tons Lbs.		Without Drawback Tons Lbs.	Page 13 With Drawback Tons Lbs.
1904 Oct. 8/9	THEOBALD Tellus Wyefield	1140 620	670 1280		1760 1950	18-33 35-36	53 45	
				Gaelic	667	316		
				Siberia	360	36		
				Mongolia	885	1654	1912	2006
				OVER	152 -	56		99 11
Oct. 8/9	COURSEUR Wyefield Thornlie Bank	212 438	2190 2220	Mongolia OVER	686 29 -	2018 2088	686	2018
" 15	COMANCHE Thornlie Bank	815	980	Mongolia China OVER	686 182	1552 245	868	1797
					53 -	817		
" 19	LUDLOW Titania Thornlie Bank	685 552	630 240	Siberia Ventura Cy Peking OVER	502 327 489	1670 492 2182	1319	2104
					82 -	1234		
" 20	MELROSE Tellus Titania	237 559	1100 1261	Mongolia China OVER	244 581	1345 1370	826	475
					29 -	354		
" 21	COURSEUR Titania Wyefield Off Sh. bnkrs	625 173 35	310 790 -	Ventura Cy Peking San Jose OVER	526 216 146	1774 1920 1888	890	1102
					57 -	2		
" 28	AUREOLA Off sh. bnkrs Wyefield	287 18 (391 (296	240) 1880) 1480 1100	China Doric OVER	290 770 67 -	1425 1946 811	1061	1031
					48	2056		
					18	995		
					7566	1873	101	2101
					471	882	369	1021

Date 1904	Barge	Tons. Lbs.	Vessel	Tons Lbs.	Without Drawback Tons Lbs.	(14) With Drawback Tons Lbs.
Nov. 2	NANAIMO Wyefield Off Sh. Bnkr	654 1490 171 460	44 San Jose Doric OVER	872 1561	36 103	10 1748
" 11	COMANCHE Wyefield Off Sh. B Wyefield	793 1520 47 180 213 2020	45-7 Cy Para 50 Acapulco 51 Manchuria OVER	1244 1416		189 2176
" 12	THEOBALD Titania	847 170	48 Sierra Bkrs. Mis. 2 OVER	879 1989	7 546	25 1273
" 15	LUDELOW Off Sh. B. Wyefield	92 1410 604 720	51 Manchuria OVER	699 1620		2 1730
" 16	MELROSE Off Sh. B. Wyefield	139 1700 599 452	51 Manchuria OVER	771 2220		33 68
" 17	RUTH Off Sh. B Wyefield	93 40 625 2060	46 Coquille River 51 Cy Panama OVER	763 799		26 1810
				5232 645	60 2018	288 2085
				4882 1022		

Date	Barge	Tons	Lbs.	Tons	Lbs.	Without Drawback Tons	Lbs.	With Drawback Tons	Lbs.	Page 15
1904 Nov. 21	Theobald Off. Sh. Bnks. Wyefteld	169	1390	1007	1020	1091	763	83-1983		
" 24	Ruth Titania	734	1120	734	1120	745	295			
" 29	Ludlow Aztec	718	410	718	410	745	360			10 1415
Dec. 1	Courser Off. Sh. Bnks. Wyefteld	88	1990	52		4	1515			26 2190
	do	441	350	51		569	990			404
	Off. Sh. Bnks. Titania	114	1100	55		9	1110			
		70	—	55		71	1614			
		112	1970	827	930	205	1668			2 1814
				60		33	1487			30 690
" 2	Melrose Aztec	981	262	981	262	889	383			
				63		93	1554			
				64-65		33	1730			
						35	1165			35 1165
		4268	1502	4459	782	84	562			106 958

Date	Barge	Tons	Lbs.	Vessel	Tons Lbs.	Without Drawback Tons Lbs.	Page 17 With Drawback Tons Lbs.
1904 Dec. 22	RUTH Lady Doris Brenn	451 239	740 760	76 City Peking OVER 18- 10	708 1510		18- 10
" 22	MELROSE Titania Wyefield	66 938	260 1000	74/57 Mongolia OVER 61- 909	1065 2169		61- 909
" 23	NANAIMO Wellington Titania	537 819	1140 20	66/6 Siberia Ventura 71 Mongolia 74/5/7 OVER 81-1131	616 1889 437 2123 463 539	1518 51	17 1671 43 1700
" 29	THEOBALD Wyefield Aztec Wm. Tottenham Brenn	892 152 657 127	520 1498 540 1910	58 Aztec Gaelic 66/7 Siberia Track 73 San Mateo 74/5/7 Mongolia 78 San Jose Ruth OVER 4- 592	43 1493 766 173 43 2092 8 1150 117 1362 377 1370 318 1880 160 -	2- 490	2 102
		4981	1668		1834 580	2 490	142 2152

		Tons	Lbs.	Vessel	Tons	Lbs.	Without Drawback Tons Lbs.	Page 20 With Drawback Tons Lbs.
1905 Feb. 22	Barge Melrose Titanian Meteor	945 470 465	2097 1028 1942	95 102	1882	587	Korea 934 967 Hawaiian 1002 1317 Over 54-1697	26 930 28 767
" 23	Comanche Meteor Algoa	666 144	1050 2158	103-4	811	968	Siberia 823 1170 Over 12- 202	12 202
" 24	Nanaimo Edith Offshore B Meteor Nanaimo Algoa	44 806 621 827	1850 1190	103-4	1472	800	Coptic 830 384 Siberia 689 1693 Over 47-1282	25 2201
Mar. 8	Nanaimo Algoa	827	1201	106 107 108) 109) 116) 115	827	1201	City of Peking 85 1028 San Jose 145 530 Mongolia 516 58 Acapulco 123 152 Over 42- 567	42 567
" 9	Ruth Algoa Yard Offshore B Yard "	1003 88 229 11 9	1863 1070 920 1500 830	106 108) 109) 116) 114	1142	1703	City of Peking 431 564 Mongolia 515 860 Acapulco 201 258 Track 7 10 Over 11-2229 168-1497	11 600 1629 1154 1692 6305 36
					6136	779	26 1590 141 2147	

1905 Mar. 15	Barge Theobald Edith Meteor	Tons Lbs.	Vessel Hawaian Sierra	Tons Lbs.	Without Drawback Tons Lbs.	With Drawback Tons Lbs.	Page 21
" 16	Comanche Edith Meteor	720 1440	105 112	1732 210	698 1431	30 1600	48 2116
		1011 1010			1113 255		
			Over 79-1476		1811 1686		
" 22	Ruth Yard	436 1140	108 109	842 371	910 420	74 359	1300
		405 1471	116		6 1610		
			Track Over 74-1659		916 2030		
" 22	Nanaimo Edith	636 585	118 121	636 585	672 2002	36 1417	14 1494
		874 1910	108 109	874 1910	672 2002		
			Mongolia 36-1417		672 2002		
" 29	Ludlow Algoa Glen-teur-it Yard	664 1569	103-4		478 1970	65 2099	10 1413
		88 2149	108		13 370	1012	
		83 110	109		680 750		
" 31	Comanche Offshore B. Titania	14 980	116		358 1868	61 347	281 1538
		392 1630	118-21		403 441		
		205 1400	125-26		1934 919		
" 31	Comanche Offshore B. Titania	418 1170		1868 48			10 1413
" 31	Comanche Offshore B. Titania	86 500	120		147 1230	59 2179	10 1413
		823 130		909 630	832 752		
					979 1982		
" 31	Comanche Offshore B. Titania						10 1413
" 31	Comanche Offshore B. Titania						10 1413
" 31	Comanche Offshore B. Titania						10 1413
" 31	Comanche Offshore B. Titania						10 1413
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" 31	Comanche Offshore B. Titania						10 1413
" 31	Comanche Offshore B. Titania						10 1413
" 31	Comanche Offshore B. Titania						10 1413

1905	Barge	Tons Lbs.		Vessel	Tons Lbs.		Without Drawback Tons Lbs.	Page 22 With Drawback Tons Lbs.
Apr. 3	Theobald	120		City of Panama	156	1676		18 999
	Titania	306	870	Sonoma	893	267		105 227
	Edith	906	1850	American	325	288	1374 2231	38 585
				Over 161-1811				
		1213	420	161-1811			1374 2231	161 1811

1905 Apr. 6	Barge Melrose Algoa Meteor Titania	Tons	Lbs.	Vessel	Page 23		
					Without Drawback Tons	With Drawback Tons	Lbs.
	431 1582	1973	1839	Siberia	322	353	
	923 1042			Roanoke	152	347	5 235
	748 1455			Mongolia	196	2170	27 1514
		127-8		City of Para	305	1773	
				American	1065	591	35 1646
				Over 68-1155			
" 14	Theobald Titania	1128	1600	Manchuria	1196	269	67 909
		127-8		Over 67-909			
	715 1710			San Juan	311	1676	
	37 30			American	210	636	10 928
	266 990	1129	2005	City of Sydney	564	60	
	110 1515			Manchuria	102	1600	48 1039
				Over 58-1967			
	728 1920	728	1920	Manchuria	746	810	21 80
				Track	3	1420	230
				Over 21-310			
	786 1420	786	1420	Newport	353	2011	
				City of Pekin	478	940	832 711
				Over 45-1531			45 1531
" 21	Melrose Yard	5747	2064	261-1392	6009	1216	5 465 256 927

Date	Barge	Tons	Lbs.	Vessel	Page 24	
					Without Drawback Tons Lbs.	With Drawback Tons Lbs.
1905 Apr. 24	Theobald Meteor	1129	1830	140	1197 3	1060 1200
				Korea Track Over 71-230	2060	70 2013
May 5	Theobald Tricolor	1131	610	144	327 921	2034 485
				San Jose Coptic Over 117-1909	279	30 2218
" 8	Ludlow Edith	621	1690	143	91 615	1090 330
				Korea Coptic Over 84-1970	73	2000
" 16	Theobald Edith	1180	1490	147 149) 150) 151)	901 403	1575 2155
				Sierra Siberia Over 125-0	1305	1490
" 17	Comanche Meteor	928	1790	149-50-1 137 146	6 662 850 325	1520 190 879
				Track Siberia Ventura Acapulco Over 162-1959 561-1588	1319	75 186 87 454
	Tricolor	753	150	1681 1940	1844	1659
		5745	840		6307	188
					161	1227
					400	361

[illegible]

Date	Barge	Tons Lbs.		Vessel	Tons Lbs.		Without Drawback Tons Lbs.		Page 26 With Drawback Tons Lbs.	
1905										
June 3	Ruth	698	1090	142	City of Pekin	282	396			
	Meteor	281	1240	143	Korea	687	927			
	"	633	1000	158)						
				159)	Mongolia	756	952	1726	5	
				163)						
					Over 112-1055				112	1055
June 9	Ruth	717	1990	168	San Juan	284	416			
	Titania			169	China	452	687	736	1103	
					Over 18-1353					
" 17	Ludlow	710	1690	149)						
	Titania			150)	Siberia	562	2113			
				151)						
	Yard	605	570		Track	6	120			
	"	307	1930	156-160	Aztec	560	2083			
	Titania	388	900	164)						
				165)	Peru	414	1058			
				166)						
	Offshore B.	44	270		Logan	480	446	10	1513	
	Titania	543	480	169	China	417	1720			
			2599	960	Track	9	1320	780		
					Newport	206	186	2658	86	47 1513
				172	Over 58-1366					
" 22	Ludlow	730	470		Doric	795	724			
	Tricolor				Over 65-254			65	254	
			730	470						
			5661	130				76	107	176 1681
					254 1788					

Date	Barge	Tons	Vessel	Tons	Without Drawback Tons	Page 27 With Drawback Tons
1905. June 23	Theobald Offshore B.	303	Siberia (149) (150) (151)	105 639		20 1066
	Titania Wellington	826 330 805 1690	City of Para Aztec (154) (156) (160)	185 314 811 1219		
	Tricolor Titania	180 2040 937 1960	Sonoma Ventura (162) (174)	987 2025 1021 1308	37 659	
June 30	Nanaimo Tricolor Yard	259 1820 923 1400	Logan Newport (173) (176) (177)	247 700 92 1062	3 1590	
July 3	Comanche Tricolor Titania	256 410 880 1240	Manchuria Over 18-52 (167) (176) (177)	861 1510	1201 1032	14 702
			Mongolia Doric	156 1288 821 1257	26 940	
July 7	Ludlow Titania	441 1550	Manchuria Over 37-1765 (176) (177)	196 1670	1174 1975	11 825
	Yard "	53 1890 179 650	Manchuria Track San Jose Over 22-1355 (176) (177)	451 740 8 1470 237 995	645	22 710
" 7	Ruth Tricolor	664 1620	Manchuria San Jose Over 61-988 (176-7) (6)	659 1108 66 1400	726 268	61 988
		6713 1620	Over 197-1405	6911 785	30 935	167 470

Date	Barge	Tons	Lbs.	Vessel	Tons	Lbs.	Without		With		Page 30
							Drawback	Tons	Drawback	Tons	
1905 Aug. 21	Ruth	770	1800	18	1366	1827	22&B	23	224	226	17
	Titania	412	1070				Buford		286	1502	
	Dunbarton	183	1197				Mongolia		661	1168	
	Germanicus						City of Sydney		216	1544	
							Barracouta		95	842	
							Over 117-1215				
" 22	Ludlow	126	2030				Coptic		91	1060	
	Yard	502	310				San Juan		259	917	
	"	288	2212				Mongolia		630	320	
	Germanicus				818	72	Track		7		
							Over		70-55		
" 23	Nanaimo	898	2120		898	2120	22&B		941	404	
	Dunbarton						Mongolia		404		
							Over 42-524				
" 31	Theobald	898	1260		1815	240	15&19		119	1078	
	Titania	916	1220				Buford		343	686	
	Dunbarton						Barracouta		332	314	
							Ventura		501	1099	
							China		302	400	
							Peru		331	1291	
							Track		2		
							Over 117-638		490	1932	
Aug. 31	Melrose	696	2156		1230	315	5&19		-290	1090	
	Titania	533	399				City of Sydney		208	539	
	Dunbarton						China		818	1137	
							Over 87-211				
					6229	94					
									431--	405	
									6663	497	
									78	792	
									355	1851	

Date	Barge	Tons Lbs.	Vessel	Tons Lbs.	Page 32	
					Without Drawback	With Drawback
					Tons Lbs.	Tons Lbs.
1905						
Oct. 4	Nanaimo Germanicus	1111 1650	34-5&B 39 Manchuria Korea Track Over 9-560	262 1450 838 2120 19 880	1120 2210	9 200
" 5	Ludlow Germanicus	1045 1890	36 City of Pekin Thomas Korea City of Para Over 30-854	408 32 532 1746 55 20 80 946	15 90	
Oct. 12	Camanche Algoa	673 1810	44 City of Panama Coptic Over 8-141	231 176 450 1775	681 1951	2 1641
" 27	Ludlow Algoa	712 1220	Arabs San Juan Siberia Over	1 274 859 482 660 45 299	134	
" 30	Melrose Germanicus Algoa Germanicus D. Wellg.	1027 857 480 23 2048	38 39 Acapulco Korea	333 912 559 2224	757 1519	45 165
Nov. 4	Nanaimo Algoa	957 1762	47 Siberia Over	1100 930 85 1538	1993 1826	85 1538
			City of Sydney Siberia Peru Over 37-576	446 1373 165 1875 382 1330	995 98	37 576
		6409 1900	215 1728	6625 1383	20 1324	195 404

Date			Tons	Lbs.	Vessel		Tons	Lbs.	Without Drawback Tons	Lbs.	Page 33 With Drawback Tons	Lbs.
1905												
Nov. 18	Barge Cananche											
	Algoa	917	210	47	Siberia	775	2140					
	Titania	826	550		Track	9	350					
	Offshore B	169	1560	51-2&B 54	Mongolia China	869	856				16	460
					Track	265	1970					
					Over 16-806	9	50	1929	886	346		
" 20	Ruth											
	Algoa	649	766		Claudine	181	680			100		
	Offshore B	268	770		Anubis	200	565			112		
	Titania	605	1420	48	Ventura	520	484					290
	Offshore B	242	700	53	Newport	264	1544					
				55	San Jose	300	226					
				54	China	299	1140	1766	159			481
					Over 983/2240							
" 28	Theobald											
	Germanicus	1129	1360	39	Korea	550	356			61		860
	Algoa	968	1979	40	Sonoma	444	2029					
	Bunkers	715	1400		Coptic	1069	1315	40	650			
	Titania	328	1410	51-2&B	Mongolia	1079	1558					
	Tellus	438	910	58	Sierra	325	1608				29	60
	Offshore B	133	810		Buford	431	1897	3901	2043	16	624	
	" Comax	40	940		Over 146-2194							
Dec. 4.	Melrose											
	Titania	1014	31	51-2&B	Mongolia	557	1297					
	Offshore B	143	1190	54	China	421	1686				48	1298
	"	78	1750		Doric	1055	1192	2034	1935	52	806	
	Titania	697	1340		Over 100-2104							
					264-1607			9632	543	109	398	155 1209

Date		Date	Barge	Ruth	Tons	Lbs.	Vessel	Tons	Lbs.	Without Drawback Tons	Lbs.	With Drawback Tons	Lbs.	Page 34
1905.														
Dec.	5		Offshore B	46	700		Buford				80	1610		
			"	46	770		Kirklee							
			Titania	475	1740	568	Doric		694	860	45	520		
							Over 125-2130							
"	8		Nanaimo											
			Offshore B	55	450		City of Pekin							
			"	268	410		Doric				25	470		
			Terje Viken	516	1790	60	Acapulco							
			Reidar	276	1740	1116	Manchuria		1355	751		213	371	
							Over 238-841							
Dec.	9		Theobald											
			Offshore B	46	770		Ame Jaurequeberry				55	1670		
			"	217	1640		Acapulco							
			"	227	820	60	Sonoma		1894	1752	47		7	1702
			Reidar	678	1570		Over 110-1132							
			Terje Viken	614	300	1784								
						3469	474	1863	3944	1123	253	2030	220	2073

Date					Vessel	Tons Lbs.	Without Drawback Tons Lbs.	Page 35 With Drawback Tons Lbs.
1905 Dec. 9	Barge Ludlow Reidar	547	140	547	140	61-5 & B	548 1750	548 1750
" 12	Ruth Terje Viken	664	1010	664	1010	"	706 956	706 956
" 19	Theobald Tellers Terje Viken	876 40	1050	916	1050	67-8	1033 1837	1033 1837
" 21	Ludlow Terje Viken	609	1580	609	1580	66 70-1	188 1392 424 1440	613 592
" 23	Ruth Reidar	446	1440	446	1440	72	180 268 1808	448 1808
" 26	Melrose Offshore B Terje Viken	74 937	600 1816	1012	176	Korea Over 30-840	1042 1016	1042 1016
				4196	916	197-323	4393 1239	1945 618

STATEMENT BY YEARS, SHOWING COAL LADEN ON BARGES, AND DISCHARGED INTO VESSELS WITH AND WITHOUT BENEFIT OF DRAWBACK.								
Year	Debit		Credit		Without Drawback		With Drawback	
	Tons	Lbs.	Tons	Lbs.	Tons	Lbs.	Tons	Lbs.
1904	99944	2210	104205	419	1660	93	2600	356
1905	107364	982	113149	1680	1457	1482	4327	1456
Totals	207309	952	217354	2099	3117	1575	6927	1812

SUMMARY.

	Tons	Lbs.	Tons	Lbs.	Tons	Lbs.
Total tons discharged from barges Jan. 1, 1904, to Dec. 31, 1905.....	217354	2099				
“ “ laden on barges Jan. 1, 1904 to Dec. 31, 1905.....	207309	952				
Excess discharged from barges over amount laden on same.....	10045	1147				
With Benefit of Drawback Segregated as Follows:						
Total excess tons alleged to have been discharged from barges and laden on vessels with benefit of drawback under Tariff Act of 1897.....			6927	1812		
Without Benefit of Drawback Segregated as Follows:						
Total excess tons alleged to have been laden on U. S. A. Transports.....			332	2027		
“ “ “ “ “ other than United States vessels.....			2784	1788		
Total					7260—1599	
Value of drawback on excess tonnage under Tariff Act of 1897.....	10045	1147				
“ “ excess tons alleged to have been laden on U. S. A. Transports.....	6927	Tons 1812				
Total excess tons alleged to have been laden on others than above without benefit of drawback..	332	“ 2027				
	2784	“ 1788				
Total amount due Government.....						
						\$6972.63

[U. S. Exhibit No. 135—Statement Showing Comparison of Weights at Mines, Invoice Weights, and Ascertained Weights of Coal from September 26, 1908, to December 31, 1912.]

[Endorsed]: No. 5233. United States vs. Howard et al. U. S. Exhibit No. 135. Francis Krull, Deputy Clerk.

No. 2576. U. S. Circuit Court of Appeals for the Ninth Circuit. U. S. Exhibit 135. Received and Filed March 4, 1915. F. D. Monckton, Clerk.

Date	Vessel	Actual Weight at Mines Tons	Invoice Weight Tons	Ascertained Weight		Short		Over		Excess of Actual Weight Over Invoice Weight Tons
				Tons	Lbs.	Tons	Lbs.	Tons	Lbs.	
1908										
Oct. 9/26	Tordenskjoeld	5822	5647	5749	560	72	1680			175
Nov. 10/13	Titania	5872	5696	5725	890	146	1350			176
Dec. 11/23	Thor	7281	7063	7241	1580	39	660			218
Dec. 2	Tordenskjoeld	5952	5773	5706	1040	245	1200			179
1909										
Jan. 12/24	Titania	5943	5765	5776	757	166	1483			178
Feb. 1/26	"	5863	5687	5692	1040	170	1200			176
" 12	Thor	7312	7093	7158	1440	153	800			219
Mar. 13	"	7307	7088	7244	1690	62	550			219
" 21	Wellington	2354	2284	2348	800	5	1440			70
Apr. 8	Thor	7332	7112	7297	1680	34	560			220
" 22	Titania	5886	5710	5775	1250	110	990			176
May 15	Thor	7422	7200	7323	2120	98	120			222
June 5/26	Wellington	2376	2305	2382	2000			6	2000	71
" 5	Thor	7332	7112	7291	630	40	1610			220
" 17	Titania	5999	5819	5810	1250	188	990			180
July 6/26	Thor	7387	7165	7171	460	215	1780			222
" 6/30	Wellington	2394	2322	2329	1420	64	820			72
July 15	Titania	5899	5840	5704	20	194	2220			59
Aug. 19	"	5961	5901	5725	1680	235	560			60
Sept. 18	Wellington	2363	2339	2311	100	57	2140			24
Oct. 9/17	Titania	{ 5367	5314	5358	2090	8	150			53
" 5	Wellington	{ 475	470	449	1600	25	640			5
" 11	Thor	7353	7329	7289	1330	32	910			24
		7399	7325	7289	470	109	1770			74
129651			126359	127185	1017	2472	983	6	2000	3292

#2

Date	Vessel	Actual Weight at Mines Tons	Invoice Weight Tons	Ascertained Weight		Short		Over		Excess of Actual Weight Over Invoice Weight Tons.
				Tons	Lbs.	Tons	Lbs.	Tons	Lbs.	
1909										
Nov. 11/5	Thor	7291	7218	7135	630	155	1610			73
" 11/18	Leelanaw	2826	2798	2611	1530	214	710			28
Dec. 12/3	Thor	7388	7314	7169	1030	218	1210			74
1910										
Feb. 1/29	Thor	7290	7217	7157	1750	132	490			73
Apr. 3/26	Thode Fagelund	{ 5869	5810	5687	230 }	250	1500			59
May 4/30	Thor	{ 896	888	827	510 }					8
" 5/7	Leelanaw	7366	7293	7224	2130	141	120			73
June 5/30	Thor	2793	2765	2742	230	50	2010			28
July 7/3	Jethon	7422	7348	7204	1910	217	330			74
" 7/17	Thor	6940	6871	6715	1291	224	949			69
Aug. 8/5	"	7433	7359	7242	1610	190	630			74
Sept. 9/20	"	7458	7384	7260	710	197	1530			74
Oct. 10/21	Falls of Orchy	7276	7203	7275	940		1300			73
" 10/8	Leelanaw	6908	6839	6686	1810	221	430			69
Nov. 10/27	"	2786	2759	2681	1050	104	1190			27
Dec. 18	Thor	2826	2798	2854	470			28	470	28
" 4	Cuszo	{ 7011	6941	6911	1700 }	101	540			70
1911		{ 206	204	204			380			2
Jan. 6	M. S. Dollar	5884	5825	5657	1860	226				59
" 21	Thor	6036	5976	6011	1796	24	444			60
		{ 7316	7154	7101	1140 }	125	1100			73
			89	89						
		117221	116053	114452	1917	2796	793	28	470	1168

Date	Vessel	Actual Weight at Mines Tons	Invoice Weight Tons	Ascertained Weight		Over Tons	Lbs.	#3. Excess of Actual Weight Over Invoice Weight Tons
				Tons	Lbs.			
1911								
Feb. 11	Thor	7266	7193	7200	930	65	1310	73
" 20	Tordenskjold	{ 5204	5146	4918	1299	285	941	58
Mar. 2	Thor	{ 583	583	557	530	25	1710	73
" 15	Saint Ronald	{ 7266	7193	7056	1010	209	1230	58
Apr. 7	Henley	{ 5767	5461	5170	1970	348	270	50
" 14	Titania	{ 248	248	248	650	183	1590	56
" 26	(May Vou.) Thor	{ 5008	4958	4824	460	161	1780	74
May 18	"	{ 5378	5325	5216	250	3	71	74
June 4	"	{ 7381	7307	7309	1670	170	1620	74
" 17	St. George	{ 7386	7312	7215	620	156	90	14
" 19	Lonsdale	{ 7436	7362	7279	2150	3	1450	26
" 21	Thor	{ 1455	1441	1451	790	56	730	74
July 7	Boveric	{ 2253	2231	2196	1510	4	1400	66
" 16	Coulsden	{ 383	379	379	840	211	2190	67
Aug. 4	Damara	{ 7434	7360	7222	50	176	2190	76
" 11	Tricolor	{ 6600	6534	6423	1330	247	910	53
" 21	Candidate	{ 6288	6225	6040	1110	58	1130	31
		{ 377	373	373	1410	163	830	
		{ 7054	6984	6995	1960	12	280	
		{ 536	530	530	960	138	1280	
		{ 3916	3877	3752	1270	26	970	
		{ 544	530	531				
		{ 2588	2562	2449				
		{ 510	505	483				
		98866	97869	96076	119	2789	2121	997

Date	Vessel	Actual Weight at Mines	Invoice Weight Tons	Ascertained Weight		Short		Over Tons.	Weight Tons	Excess of Actual Weight Over Invoice	#5
				Tons	Lbs.	Tons	Lbs.				
1912		Tons	Tons	Tons	Lbs.	Tons	Lbs.				
Sept. 19	Wellington	2327	2304	2317	1240	9	1000	48	1210	23	
Oct. 5	"	2249	2227	2297	1210					22	
" 26	"	2269	2246	2264	1530	4	710			23	
Nov. 17	Queen Elizabeth	6835	6767	6718	642	116	1598			68	
" 23	Wellington	2271	2248	2246	1850	24	390	1	1560	23	
Dec. 6	"	2251	2228	2252	1560					23	
" 24	"	2251	2228	2235	1900	15	340				
		20453	20248	20333	972	169	1798	50	530	205	

SHOWING COMPARISON OF ACTUAL WEIGHTS AT MINES, INVOICE WEIGHTS AND ASCERTAINED WEIGHTS,
ON CARGOES OF COAL RECEIVED BY WESTERN FUEL CO., FROM NANAIMO, B. CO.,
FROM SEPTEMBER 26, 1908, TO DECEMBER 31st, 1912, INCLUSIVE.

Sheet No.	Actual Weight at Mines	Invoice Weight		Ascertained Weight		Short		Over		Excess of Actual Weight Over Invoice Weight
		Tons	Lbs.	Tons	Lbs.	Tons	Lbs.	Tons.	Lbs.	
No. 1	129651	126359	127185	1017	983	2472	983	6	2000	3292
No. 2	117221	116053	114452	1917	793	2796	793	28	470	1168
No. 3	98866	97869	96076	119	2789	2789	2121	..	....	997
No. 4	100159	99238	98021	1250	2137	2137	990	..	....	921
No. 5	20453	20248	20333	972	1798	169	1798	50	530	205
	466350	459767	456069	795	2205	10365	2205	85	760	6583

Total NET Shortage of Actual Weight=10280/1445 Tons
 Percentage of Shortage, on basis of Actual Weight=2.2%
 " " " " Invoice " = .8%
 Difference between Actual Weights and Invoice Weights=6583 Tons

**[U. S. Exhibit No. 137—Statement Showing Coal
Laden on Barges, Amounts Discharged, and
Shortages.]**

Date 1904	Barge	Laden on Board		Discharged		Short	
		T.	Lbs.	T.	Lbs.	T.	Lbs.
Jan. 9	Pinole	84	620	62	380	22	240
Apr. 21	Courser	351	370	337	595	13	2015
June 2	Theobald	1000	1464	991	530	9	934
Aug. 29	Aureola	1262	162	1225	1758	36	644
Nov. 26	Camanche	943	1070	937	1309	5	2001
Dec. 10	Ludlow	402	380	399	320	3	60
1905							
Feby. 28	Energy	601	948	596	59	5	889
Apr. 12	"	600	221	587	1120	12	1341
July 12	Nanaimo	516	1570	516	1176		394
" 25	"	907	630	900	1468	6	1402
Aug. 19	Camanche	910	550	907	1240	2	1550
Sept. 13	Nanaimo	639	520	637	1199	1	1561
Nov. 10	Ludlow	700	1730	699	1900		2070
1906							
Jan. 15	Nanaimo	1798	1870	1797	291	1	1579
Feby. 3/4	"	1582	1270	1581	1455		2055 1680
Apr. 17	Energy	491	560	482	1180	8	1620
May 1	Ruth	632	1110	628	712	4	398
July 13	Melrose	1683	150	1672	496	10	1894
Aug. 23	Ludlow	635	920	634	1450		1710
Sept. 8	Camanche	956	500	946	1270	9	1470
Oct. 9	Ludlow	757	970	746	1899	10	1311
Nov. 13	Nanaimo	900	1220	832	1620	67	1840
Dec. 13	Ludlow	496	1540	490	2170	5	1610
		18854	185	18612	957	241	1468

The United States of America.

2875

		Laden on Board.		Discharged		Short	
		T.	Lbs.	T.	Lbs.	T.	Lbs.
1907							
Jan. 4	Melrose	1199	262	1196	803	2	1699
Feby. 9	Ruth	252	1450	252			1450
" 18	Melrose	1001	600	990	208	11	392
" 25	Camanche	950	280	949	1245		1275
May 6	"	771	560	696	2092	74	708
1908							
Apr. 4/5	Shasta	233	1860	222	258	11	1602
1909							
June 3	Nanaimo	857	2070	814	15	43	2055
" 8	"	940	1720	921	393	19	1327
July 3	Shasta	201	495	201	461		34
Sept. 14	"	250	1450	237	96	13	1354
Nov. 5	Theobald	2883	1440	2856	185	27	1255
" 5	Camanche	877	1620	854	751	23	869
1910							
Jan. 13	Nanaimo	428	1940	414	433	14	1507 1388
" 15	Solano	119	1140	112	1966	6	1414
" 17	Mono	310	1540	309	1518	1	22
Sept. 16	Ruth	336	670	334	2008	1	902
1911							
Jan. 7	Camanche	912	270	909	2233	2	277
1912							
May 11	Theobald	1125	1470	1102	358	23	1112
Oct. 29	Camanche	798		794	395	3	1845
		14451	677	14168	1978	282	939
Recapitulation							
Page 1		18854	185	18612	957	241	1468
" 2		14451	677	14168	1978	282	939
		33305	862	32781	695	524	167

[Endorsed]: No. 5233. U. S. v. Howard et al. U. S. Exhibit No. 137.
Francis Krull, D. C.

No. 2576. U. S. Circuit Court of Appeals for the Ninth Circuit. U. S.
Exhibit 137. Received and Filed Mch. 4, 1915. F. D. Monckton, Clerk.

[U. S. Exhibit No. 150—Invoice of Coal Purchased by Hind, Rolph & Co., Bill of Lading, Consumption Entry, and Weigher's Return of Coal Measured and Weighed.]

538,
Shipped in good order and well-conditioned by the Abermain Colliery Coy., Ltd., in and upon the good Ship called the "Americana," whereof N. Wagner, is Master for this present voyage and now riding at anchor in the Port of Newcastle, and bound for San Francisco Bay, inside Golden Gate. One thousand, two hundred and ninety-one (1291) tons Abermain Best Screened Coal, being marked and numbered as in the Margin, to be delivered in the like good order and well-conditioned at the aforesaid Port of San Francisco Bay inside Golden Gate, (the Act of God, the King's Enemies, Fire, and all and every other dangers and Accidents of the Seas, Rivers, and Navigation of whatever nature and kind soever excepted) unto Messrs. Hind Rolph & Co., or to their Assigns. Freight for the said Coal, and all other conditions and exceptions as per Charter Party. Average as per York-Antwerp Rules, 1890.

IN WITNESS whereof the Master or Purser of the said Ship hath affirmed to Three Bills of Lading, all of this tenor and date, the one of which Bills being accomplished the others to stand void.

Dated in Newcastle, N.S.W., 7th, Oct., 1912.

Weight Unknown. N. Wagner, Master.

This Bill of Lading is to be read and construed as if every clause therein contained which is rendered illegal or null and void by the Sea Carriage of Goods Act of 1901, had never been inserted therein, or had been cancelled and eliminated prior to the execution thereof, but this Bill of Lading is subject to all the exemptions of liability contained in the said Act.

The Abermain Colliery Company, Ltd.

Head Office: 4 O'Connell Street, Sydney.

Collieries: Near Newcastle.

Shipping Office: Newcastle, N.S.W.

Cable Address: "ADAMANT," Sydney

A.B.C. (4th & 5th Edition), Scott's, Watkins,

Western Union and Standard Codes Used

2 days' Demurrage, amounting to £27 : 19 : 4
paid at Newcastle.

1291 Tons of Coal.

NOTE 5 tons of Coal on board for Ship's use independent of cargo.

Davies and Cannington, Ltd., Federal Print.,
Newcastle.

INVOICE.

Newcastle, N. S. W., 8th, Oct., 1912.

Invoice of 1291 tons Best Screened Coal purchased by Hind, Rolph & Co., of San Francisco, U. S. A., from Abermain Colliery Co., Ltd., of Newcastle, N. S. W., to be shipped per "Americana."

Marks, Numbers, and Quantities.	Price per Unit.	Total Amount.	Consular Corrections or Remarks.
FULL DESCRIPTION OF GOODS.			
Bituminous Coal		428:	45¢ Ton
1291 tons Best Serd. Coal	11/-		
	less		
	2½%	692: 6 0	
Consular Fee.		10 4	
		<u>£692:16 4</u>	

Mdse. as Noted. Jan. 15, 1913. W. G. R., Ex. J. B. Stevens, Asst. App. [Stamped]:

No. of Entry, 538.

I certify that this Invoice was presented to me on Entry this date.

Custom House, } Jan. 9, 1913.
San Francisco. }

G. P. Clough,
Acting Deputy Collector.
To Appraiser's Store,

C. J. E.
Approved:

Jul. Mater.
Appraiser.

U. S. Appraiser will Examine at Wharf Before Delivery.

Am't. of Inv. £692:16 4

Less Chgs. 538. 10 4

538. 692- 6-0

3357.89

9.73

1.46

7369.08

@ 4.8665 \$3369.08

Hind, Rolph & Co. L.

N.B.—Always state the cost of packing, and all other costs, charges and expenses.

The above invoice is correct and true.

(Signature of purchaser or seller or agent of either)

Abermain Colliery Company, Limited,

A. J. Palmer, Pres.

Shipping Manager.

DUPLICATE.

PURCHASED BY IMPORTER.

Invoice No. 80 issued in (Triplicate.)

Quadruplicate

Certified October 8th, 1912.

AMERICAN CONSULAR SERVICE

at

NEWCASTLE, N.S.W.

Date 8th, Oct., 1912.

Seller, Abermain Colliery Co., Ltd., Newcastle, N.S.W.

Purchaser, Hind, Rolph & Co., San Francisco, U. S. A.

Name of vessel or railroad "Americana."

Port of shipment, Newcastle, N.S.W.

Port of arrival, San Francisco.

Port of entry, San Francisco.

Amount of invoice, £692 16 4.

Kind of goods, 1291 tons Coal.

[Stamped]:

Cashier's Office, Custom House, San Francisco.

Duty Paid. Jan. 9, 1913. P. M.

CUSTOM-HOUSE INDORSEMENT.

No. 538.

Importer, Hind, Rolph & Co.

Vessel, Am. Schr. "Americana."

From Newcastle, N.S.W.

Arrived, Jan. 3, 1913.

Kind of Entry.

Deposit

Marks, Quantity, and Contents:

1291 Tons Coal

[Stamped]:

Liquidated, U. S. Customs. Jan. 27, 1913.

Jan. 9, 1913. P. M.

*Consular officers will leave all of above indorsement blank. It is to be filled in only at the custom-house at the port of entry.

Hind, Rolph & Co. L.

Form No. 138.

Declaration of Purchaser or Seller or Duly Authorized Agent of Either.

I, the undersigned, do solemnly and truly declare that I am the Sellers
(Purchaser or Seller.)

of the merchandise in the within invoice mentioned and described; that the said invoice is in all respects correct and true, and was made at the place named therein, whence said merchandise is to be exported to the United States of America; that said invoice contains a true and full statement of the time when, the place where, and the person from whom the same was purchased, and the actual cost thereof, price actually paid or to be paid therefor and all charges thereon; that no discounts, bounties, or drawbacks are contained in said invoice but such as have been actually allowed thereon; that no different invoice of the merchandise mentioned in said invoice has been or will be furnished to anyone, and that the currency in which said invoice is made out is that which was actually paid or is to be paid for said merchandise.

I further declare that it is intended to make entry of said merchandise at the port of San Francisco, in the United States of America.

Dated at Newcastle, N.S.W., this 8th day of Oct., 1912.

Abermain Colliery Company, Limited.

A. J. Palmer, Pres.

Shipping Manager.

Form No. 140.

CONSULAR CERTIFICATE.

(Date) October 8th, 1912.

I do hereby certify that the invoice described in the indorsement hereof was this day produced to me by the signer of the annexed declaration,

I do further certify that I am satisfied that the person making the declaration hereto annexed is the person he represents himself to be, and that the prices given in the invoice agree with the actual market value or wholesale price of the merchandise described in the said invoice in the principal markets of the country at the time of exportation, excepting as noted by me upon said invoice, or respecting which I shall make special communication to the proper authorities.

I further certify
that a fee of \$2.50 United States gold, equal to 10/4 has been paid by
(Local currency)

affixing stamps to the duplicate copy of this document.

Witness my hand and seal of office the day and year aforesaid.

G. B. Killmaster,
American Consul.

[Stamp]: American Consular Service. Fee Stamp. \$2.50. G. B. K.

Article 217, Customs Regulations
of 1908.

CONSUMPTION ENTRY.

ENTRY OF MERCHANDISE Imported by Hind, Rolph & Co., in the Am. Schr. "Americana," Date of Arrival Jan. 3, 1913.
on the day of Jan. 3, 1913, San Francisco, Jan. 4, 1913. Master, from Newcastle N. S. W.,

Marks	Nos. on Pkgs.	No. of Pkgs.	KIND OF PACKAGES AND CONTENTS (For Specifications see accompanying invoice)	Quantity	Value £	Sp.	45¢ T.
			Invoice No.....	Dated at Newcastle, N. S. W.			
		1291	Tons Bituminous Coal,	1291 T.	692-6-0	\$3369.08	1259½
[Stamped]:			[Stamped]:				566.78
Deposit	\$580	95	Cashier's Office, Custom House. San Francisco.				580.95
Duty	566	78	Duty Paid. Jan. 9, 1913. P. M.				538
Excess Imp.	14	17	[Stamped]:				
			U. S. Appraiser Will Examine at Wharf Before Delivery.				
							Jan. 9, 1913.
							Hind, Rolph & Co.

DISTRICT AND PORT OF SAN FRANCISCO, CAL.

Declaration of Consignee, Importer or Agent, Where Merchandise Has
Been Actually Purchased.

Declaration of Owner in Cases Where Merchandise Has Been Actually
Purchased.

I,, do solemnly and truly declare that I am the owner by purchase of the merchandise described in the annexed entry and invoice; that the entry now delivered by me to the Collector of Customs at San Francisco contains a just and true account of all goods, wares, and merchandise imported by or consigned to me, in the Am. Schr. "Americana," whereof is Master, from Newcastle, N.S. W., that the invoice and entry, which I now produce, contain a just and faithful account of the actual cost of the said goods, wares, and merchandise, and include and specify the value of all cartons, cases, crates, boxes, sacks, casks, barrels, hogsheads, bottles, jars, demijohns, carboys, and other containers or coverings, whether holding liquids or solids, which are not otherwise specially subject to duty under any paragraph of the tariff Act, and all other costs, charges, and expenses incident to placing said goods, wares, and merchandise in condition, packed ready for shipment to the United States, and no other discount, drawback, or bounty but such as has been actually allowed on the same; that I do not know or believe in the existence of any invoice or bill of lading other than those now produced by me, and that they are in the state in which I actually received them. And I further solemnly and truly declare that I have not in said entry or invoice concealed or suppressed anything whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; that to the best of my knowledge and belief the said invoice and the declaration thereon are in all respects true, and were made by the person by whom the same purport to have been made, and that if at any time hereafter I discover any error in the said invoice or in the account now produced of the said goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district.

.....
Declared to, before me this — day of }
Jan. 9, 1913, 9 A. M.

Geo. W. Hind.

T. J. Barry, Acting Deputy Collector.

Entry No. 538.

IMPORTER.

Hind, Rolph & Co.

Vessel Am. Schr. "Americana."

From Newcastle, N.S.W.

Arrived Jan. 3, 1913.

Deposit Jan. 9, 1913 \$580.95

Add'l. Dep....., 191 \$

Liquidated Duty \$566.78

Excess Due Imp. \$ 14.17

Amount of Duty Paid.....\$. . .

Re-liquidated Duty.....\$. . .

Excess Due.....\$. . .

[Stamp]:

Custom House.

Refunded.

Feb. 14, 1913.

Auditor's Office,

San Francisco.

[Stamp]:

Liquidated, U. S. Customs. Jan. 27, 1913.

Liquidated , 191

HIND, ROLPH & CO.

310 California Street

San Francisco.

L.

E. N.O.

Cat. No. 923.

Art. 1665, Customs Regs., 1899.

UNITED STATES CUSTOMS SERVICE.

Return of Coal measured and weighed from on board the Am. Schr. Americana,
whereof..... is Master, from Newcastle, Aust.

Date of
Entry. To Whom Consigned as Permitted.

Hind, Rolph & Co.,

No. of Bushels. Average
Weight per
Bushel. No. of Tubs.
1291 Tons (31 1080 Tons Short)
2240

Weight of
Each Tub.
2,821,320

Whole Number
of Pounds.
1259

Port of San Francisco, Jan. 15, 1913.

[Endorsed]: No. 5233. U. S. vs. Howard et al. U. S. Exhibit No. 150. Francis Krull, Deputy Clerk.

No. 2376. U. S. Circuit Court of Appeals for the Ninth Circuit. U. S. Exhibit 150. Received and Filed Mch. 4, 1915. F. D. Monck-
ton, Clerk.

Entry No. 538.
Manifest No.

(1259 1160 Tons)
2240
F. L. Wooster,
Weigher. H.

Cwt. Qrs. Lbs.
10 1 12

**[U. S. Exhibit No. 151—List of Items of Exhibit “C”
in Which Discrepancies Occur in Barge Books.]**

[Endorsed]: No. 151. United States v. Howard,
U. S. Exhibit No. 151. Francis Krull, Deputy Clerk.

No. 2576. U. S. Circuit Court of Appeals for the
Ninth Circuit. U. S. Exhibit 151. Received and
filed, Mch. 4, 1915. F. D. Monckton, Clerk.

LIST OF ITEMS OF EXHIBIT "C"
IN WHICH DISCREPANCIES OCCUR IN BARGE BOOKS.

Exhibit "C"	Page.	Date.	Barge		Receipts.		Deliveries		Total		Amount Shown in Exhibit "C."	Excess of Receipts and Deliveries Over	Total number of Barge loads shown in Exhibit "C".....486	Number of the above showing incorrect receipts and deliveries.. 20
			Tons.	Lbs.	Tons.	Lbs.	Tons.	Lbs.	Tons.	Lbs.				
	32	Aug. 13, 1908	3917	560	3917	1067	2073	597	2073	597	2073	597	Total receipts as shown in "Ex-	
	33	" "	1851	630	1915	790	1324	2146	1324	2146	1324	2146	hibit "C".....563759	724
	34	Sep. 11, "	3666	1580	3778	919	2535	1168	2535	1168	2535	1168		
	34	Oct. 2, "	3047	1350	3101	79	1726	842	1726	842	1726	842	Overage	33223
	35	" 26, "	2319	1840	2455	428	977	1903	977	1903	977	1903		542
	35	Nov. 7, "	2613	990	2722	1731	801	2083	801	2083	801	2083	Percentage of overage.....	5.89
	38	Jan. 6, 1909	3358	1120	3505	99	1306	428	1306	428	1306	428		
	39	Mar. 18, "	3570	70	3637	281	1717	958	1717	958	1717	958		
	40	" 31, "	2510	1430	2618	1665	1760	189	1760	189	1760	189		
	40	Apr. 1, "	2426	1090	2626	405	1545	631	1545	631	1545	631		
	43	Sep. 16, "	1759	1600	1779	128	1007	510	1007	510	1007	510	Total receipts by addition of	
	49	Mar. 19, 1910	1537	344	1647	887	906	664	906	664	906	664	excess as shown herewith—	
	60	Apr. 6, 1911	3421	1269	3468	2118	2039	1656	2039	1656	2039	1656	563759....	724
	64	Sep. 12, "	2313	737	2411	1833	1463	1555	1463	1555	1463	1555	31732....	1618
	64	" 14, "	3613	1820	3785	1713	2907	1223	2907	1223	2907	1223		
	67	Dec. 4, "	2483	860	3002	977	1757	1451	1757	1451	1757	1451		
	68	" 19, "	2821	1960	2952	1562	1357	513	1357	513	1357	513	595492....	102
	74	Aug. 31, 1912	3411	1650	3605	629	1875	992	1875	992	1875	992	Overage	33223.... 542
	76	Oct. 24, "	4333	1220	4390	86	1969	1452	1969	1452	1969	1452	Percentage of overage.....	5.57
	76	Nov. 20, "	1314	2080	1381	582	679	817	679	817	679	817		
		Total	56292	1800	58702	59	31732	1618	31732	1618	31732	1618	Total deliveries as shown in "Ex-	
													hibit "C".....	596982 1266
													Add excess as shown	
													herewith	31732 1618
													Correct Total Deliveries	628715 644

Total receipts by addition of
excess as shown herewith—
563759.....724
31732....1618

595492.... 102
Overage33223.... 542

Percentage of overage.....5.57

[U. S. Exhibit No. 152—Statement of Shortages and
Overages.]

S. S. "INDRA."

1908.

Jan. 24—Feb. 3—

103.2210 Yard Bunkers
656.1990 Offshore Bunkers
6248.652 Algoa

7009.372

Short 268.1868 Tons

S. S. "THYRA"

1908.

Feb. 11—14—

539.1840 Offshore Bunkers
2170.1461 Algoa
883.2100 Melrose
249.1490 Nanaimo
888.1020 Theobald
151.450 Shasta
60.1390 Pinole
96. "
70.120 Thyra

5110.911

Short 69.1329 Tons

"ALGOA"

a/c 'Indra'.....	6248.652
" 'Thyra'.....	2170.1461
	<hr/> 8418.2113

EX "ALGOA"

1908.

June 3	Melrose	316.779
Aug. 26	"	227.1392

1909.

Apr. 8—10	"	1014.1335
" 21—24	"	1042.1125
May 18—21	Theobald	1078.475
" 21—24	Melrose	705.1170
June 4—8	Theobald	924.972
" 9—12	Melrose	880.1915
" 19—23	Theobald	906.297
" 19—30	Melrose	1080.416
" 30	Rough and Ready	157.1486
" 29	Sch. "Shasta"	201.495

8535.657

Over—116.784

1908.		Melrose.	
July 22—		Oct. 12—	
a/c Algoa	316.779	a/c Algoa	227.1392
" Offshore Bunkers	45.2090	" S. N. Castle	772.2000
" Tordenskjold	718.310	" Yard	584.710
" Offshore Bunkers	175.1090	" Offshore Bunkers	399.1500
" Thor	354.2230	" Beaver Rock Rygja	402.1510
" Offshore Bunkers	110.1980	" Offshore Bunkers	21.200
" Titania	751.830	" Titania	577.990
" Tordenskjold	359.650	Hong Kong Maru	915.600
Manchuria	581.626	Mongolia	410.2096
Nippon Maru	820.831	Crook	640.835
Mongolia	425.861	America Maru	1039.534
Korea	1139.301		3005.1805
Over—	133.1628	Over—	20.223
1909.		Melrose	
Apr. 20		a/c Algoa	1014.1335
		Asia	1031.1864
		Over—	17.529

Total Output of Barges Loaded Wholly or in Part
from S. S. "Algoa."

		Tons Lbs.
July 22, 1908.	Melrose	2966.379
Oct. 12, "	"	3005.1805
Apr. 20, 1909.	"	1031.1864
June 3, "	"	1854.864
July, 2, "	Theobald	2971.876
Aug. 14, "	Melrose	2556.462
July 6, "	Rough and Ready	158.144
July 3, "	Shasta	201.461
Total.....		14745.135

Overages on above Barges.

			Tons Lbs.
July 22, 1908.	Melrose	Over	133.1628
Oct. 12, "	"	"	20.223
Apr. 20, 1909	"	"	17.529
June 3, "	"	"	106.809
July 2, "	Theobald	"	62.1372
Aug. 14, "	Melrose	"	11.1061
July 6, "	Rough and Ready	"	.898
			351.2040

Deduct:

July 3, 1909	Shasta	Short	.34
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Total Net Overage 351.2006

[Endorsed]: No. 5233. United States v. Howard.
U. S. Exhibit No. 152. Francis Krull, Deputy Clerk.

No. 2576. U. S. Circuit Court of Appeals for the
Ninth Circuit. U. S. Exhibit 152. Received and
filed Mch. 4, 1915 F. D. Monckton, Clerk.

**[U. S. Exhibit No. 153—Statement Showing
Percentage of Overage.]**

Page.	Barge.	Date.	Percentage of Overage.
2	"Theobald"	Jan. 17-31, 1906	9.4
2	"Nanaimo"	Feb. 3-10, "	32.5
7	"Ludlow"	May 3-22, "	9.5
9	"Theobald"	June 29-July 6, 1906	12.2
9	"Ruth"	July 11-21, 1906	15.6
11	"	Aug. 30-Sept. 14, 1906	10.
16	"	Jan. 29-Feb. 3, 1907	13.
21	"Ludlow"	May 13-29, "	20.
21	"Nanaimo"	June 24-July 6, "	21.
23	"Melrose"	July 31-Aug. 7, "	21.
23	"Theobald"	Aug. 19-27, "	16.
26	"Comanche"	Nov. 7-20, "	14.
24	"Theobald"	Sept. 5-24, "	10.
28	"	Feb. 13-18, 1908	16 $\frac{2}{3}$
28	"Melrose"	" 11-22, "	18.5
28	"	" 24-29, "	10.5
30	"Comanche"	May 16-21, "	23.5
31	"Ludlow"	June 27-July 16, 1908	24.
35	"Theobald"	Oct. 5-19, 1908	14.
37	"Melrose"	Nov. 11-Dec. 30, 1908	9.6
38	"	Jan. 4-15, 1909	11.
39	"Ruth"	Dec. 1/08-Feb. 25, 1909	11.
39	"Theobald"	Feb. 13-Mar. 10, 1909	11.5
45	"Comanche"	Oct. 22-29, 1909	16.6
45	"Theobald"	Nov. 13-Dec. 2, 1909—	11.8
45	"Nanaimo"	Dec. 7-27, 1909	9.
46	"Theobald"	" 31/09-Jan. 3, 1910	9.8

Page.	Barge.	Date.	Percentage of Overage.
47	"Theobald"	Jan. 5-15, 1910	12.9
47	"Melrose"	" 15-19, "	10.3
47	"Nanaimo"	" 21-23, "	10.
47	"Ruth"	" 21-23, "	26.
47	"	" 25-28, "	11.8
49	"	Feb. 7-Mar. 23, 1910	11.9
49	"Melrose"	Mar. 16-29, 1910	12.9
50	"Nanaimo"	Apr. 4-May 4, 1910	10.
50	"Comanche"	" 19- " 5, 1910	11.5
50	"Theobald"	" 9- " 19, 1910	10.
52	"Melrose"	July 7-22, 1910	20.6
53	"Comanche"	Aug. 2- 9, 1910	12.4
54	"	Sept. 12-15, 1910	31.
55	"Theobald"	Oct. 20-31, "	14.
56	"	Nov. 10-22, "	10.
58	"	Dec. 9-11, "	42.6
59	"Comanche"	Jan. 17-21, 1911	13.4
60	"	Feb. 17-Mar. 11, 1911	14.
60	"Theobald"	Mar. 21-Apr. 8, 1911	10.
62	"Nanaimo"	June 12-30, 1911	13.
65	"Melrose"	Sept. 18-27, 1911	19.4
66	"Comanche"	" 28-Oct. 11, 1911	13.7
67	"Melrose"	Nov. 4-Dec. 4, 1911	17.
67	"	Dec. 6-12, 1911	14.
68	"Nanaimo"	" 8-17, 1911	15.8
73	"Theobald"	May 23-25, 1912	40.
73	"Melrose"	June 4-18, 1912	12.7
75	"Nanaimo"	Sept. 17-Oct. 9, 1912	11.7
73	"Wellington"	May 23-27, 1912	11.

[Endorsed]: No. 153. United States v. Howard et al. U. S. Exhibit No. 153. Francis Krull, Deputy Clerk.

No. 2576. U. S. Circuit Court of Appeals for the Ninth Circuit. U. S. Exhibit 153. Received and filed Mch. 4, 1915. F. D. Monckton, Clerk.

[U. S. Exhibit No. 154—Statement Showing Shorts and Overs During Years 1904 to 1912, Inclusive.]

STATEMENT SHOWING SHORTS AND OVERS IN COMPLETE CARGOES OF COAL IMPORTED BY THE WESTERN FUEL COMPANY DURING THE YEARS 1904 TO 1912, INCLUSIVE, AS WEIGHED IN ENTIRETY ON SCALES IN SAN FRANCISCO AND OAKLAND, CALIFORNIA: STEAMER "WELLINGTON."

Arrival Date of Vessel.	Entry No.	Short		Over	
		Tons.	Lbs.	Tons.	Lbs.
1905.					
Jan. 1.	25	12	730		
May 28	6557	78	1940		
June 9.	7082	66	600		
July 16.	8683			19	1900
Mar. 31.	4854	24	740		
Apr. 22.	6090	71	1680		
1909.					
Feb. 5.	1911	70	60		
" 24.	2668	56	1010		
June 21.	8010	44	1270		
Nov. 17.	14962	99	930		
Dec. 5.	15837	71	380		
1912.					
Feb. 9.	2463	201	1800		
" 21.	3081	181	1800		
Mar. 10.	4229			7	1680
Apr. 4.	6028			1	1780
May 12.	8181	32	270		
" 22.	8853	104	520		
June 15.	10298	108	970		
" 29.	11002	22	90		
July 11.	11822	66	150		
" 23.	12398	29	1770		
Aug. 8.	13518	6	680		
Oct. 10.	17852			70	1210
" 31.	19335			18	1530
Nov. 27.	21429	1	390		
Dec. 11.	22150			24	1560
" 29.	23400			7	1900
Totals,		1348	2100	151	360

WEIGHED IN OAKLAND.

Arrival Date of Vessel.		Entry No.	Short		Over	
			Tons.	Lbs.	Tons.	Lbs.
1904.						
Oct. 18.	S. F.	13271			55	2040
Nov. 1.	Oak.	52			43	10
Dec. 18.	"	67			79	1870
1905.						
Jan. 13.		3			42	1775
" 28.		8			{ 24	1310
					{ 14	1800
Feb. 13.	Oak.	11			34	40
Mar. 11.	"	14			{ 29	870
					{ 16	90
" 29.	"	16			{ 9	1340
					{ 20	470
Apr. 12.	"	17			58	1960
May 1.	"	21			91	1790
" 13.	"	22			62	1920
June 24.	"	28			16	715
Aug. 18.	"	33			60	10
Sep. 1.	"	35			22	2110
" 24.	"	39			19	1120
Nov. 7.	"	46			41	1990
" 22.	"	49	2	810		
Dec. 6.	"	51	51	1340		
" 19.	"	54			10	1780
1906.						
Jan. 4.		1			30	1080
" 22.		4			20	920
Feb. 6.	Oak.	5			6	1630
" 19.	"	9			15	1800
Mar. 7.	"	12			69	1610
" 21.	"	13			6	1470
Apr. 5.	"	17			58	2160
" 19.	"	20	16	2020		
June 22.	"	42			23	1660
July 13.	"	72			14	860
1907.						
Mar. 2.	S. F.	3552	47	570		
Sep.			62	850		
Nov. 9.	"	17022	2	10		
Dec.	Oak.	296	36	1080		
1908.						
Nov.	Oak.	122	66	290		
Dec. 11.	S. F.	16678	43	1960		
" 27.	Oak.	140	37	990		
1909.						
Mar. 25.	Oak.	26			64	800
Sep. 24.	"	65	27	2140		
Oct. 11.	"	79	8	910		
" 27.	"	95	11	440		
1912.						
Mar. 22.	S. F.	5070			18	490
Apr. 16.	"	6582	1	1250		
June 3.	"	9475	34	90		
Sep. 23.	"	16480			13	1240
Totals,			449	1310	1098	410

[Endorsed]: No. 5233. United States v. Howard et al. U. S. Exhibit No. 154. W. B. Maling, Clk. By Lyle S. Morris, Deputy Clerk. 1/21/14.

No. 2576. U. S. Circuit Court of Appeals for the Ninth Circuit. U. S. Exhibit 154. Received and filed Mch. 4, 1915. F. D. Monckton, Clerk.

[Endorsed]: No. 5233. United States v. Howard et al. U. S. Exhibit No. 155. W. B. Maling, Clk. By Lyle S. Morris, Deputy Clerk. 1/21/14.

No. 2576. U. S. Circuit Court of Appeals for the Ninth Circuit. U. S. Exhibit 155. Received and filed March 4, 1915. F. D. Monckton, Clerk.

**[U. S. Exhibit—Sample Invoice upon Which
Consumption Entry Was Made.]**

INVOICE.

9576.

Nanaimo, B. C., 18th June, 1907.

Invoice of Coal, consigned to Western Fuel Co., at San Francisco, Cal.,
for sale on account of Western Fuel Co., shipped by Western Fuel
Company, Nanaimo, B. C., per S/S "Hornelen."

Marks and Numbers.	Description.	Value.	Amount.	Consular Corrections.
	Bituminous Coal		415	67¢ per Ton.
	5975 tons Coal	4.00	23900.00	67¢ Ton
	Consular Invoice		2 50	
			<hr/>	
			\$23902 50	
			<hr/>	

[Written in red ink:]

June 29-07

Amt. \$23900.00

T. R. E.

Jno. Dare,

Appr.

[Stamped:]

Jun. 24, 1907.

9496

I Certify That This Invoice was Presented to Me on Entry.

Custom House, }
San Francisco. }

Jun. 24, 1907.

T. J. BARRY,

Deputy Collector.

A

To Appraisers Store.

U. S. Appraiser Will

Examine at Wharf

Before Delivery.

(Signature of owner or agent.)

WESTERN FUEL CO.:

MARK BATE, Jr.,

Agent.

(Form No. 139.)

**Declaration of Owner or His Duly Authorized Agent Covering Goods
Shipped Without Sale.**

I, the undersigned, do solemnly and truly declare that I am the shippers of the merchandise in the within invoice mentioned and described; that the said invoice is in all respects correct and true, and was made at Nanaimo, B. C., whence said merchandise is to be exported to the United States; that said invoice contains the actual market value or wholesale price of the said merchandise at the date hereof in the principal markets of B. C.; that said actual market value is the price at which the merchandise described in the invoice is freely offered for sale to all purchasers in said markets, and that it is the price which I would have received, and was willing to receive, for such merchandise sold in the ordinary course of trade in the usual wholesale quantities, and that it includes all charges thereon and the actual quantity thereof, and that no different invoice of the merchandise mentioned in the said invoice has been or will be furnished to anyone. I further declare that it is intended to make entry of said merchandise at the port of San Francisco, Cal., in the United States of America. I further declare—

Dated at Nanaimo, B. C., this 18th day of June, 1907

WESTERN FUEL CO.

MARK BATE, Jr.,

Agent.

(Form No. 140.)

CONSULAR CERTIFICATE.

I, the undersigned, Consular Agent, of the United States, do hereby certify that, on this 18th day of June, A. D. 1907, the invoice described in the indorsement hereof was produced to me by the signer of the annexed declaration.

I do further certify that I am satisfied that the person making the declaration hereto annexed is the person he represents himself to be, and that the actual market value or wholesale price of the merchandise described in the said invoice in the principal markets of the country at the time of exportation is correct and true, excepting as noted by me upon said invoice, or respecting which I shall make special communication to the proper authorities. I further certify.....

Witness my hand and seal of office the day and year aforesaid.

Received ———, equal to \$2.50, U. S. gold.

JOSEPH H. PASHLEY,

American Consular Agent of the United States.

[American Consular Service Fee Stamp—\$2.50.]

2900

James B. Smith et al. vs.

267202

DUPLICATE.

NOT PURCHASED BY IMPORTER.

Invoice No. 78.

Jun. 18, 1907.

CONSULAR SERVICE, U. S. A.,

at

NANAIMO, B. C.

Date: Jun. 18, 1907.

Consignor: Western Fuel Company

Nanaimo, B. C.

Consignee: Western Fuel Co.

San Francisco, Cal.

Name of vessel: S. S. "Hornelen"

Port of shipment: Nanaimo, B. C.

Port of arrival: San Francisco, Cal.

Port of entry: San Francisco, Cal.

Value: \$23,902 50/100

Contents: Coal

Five thousand nine hundred and seventy-five tons

CUSTOM-HOUSE INDORSEMENT.*

No. 9496

Importer: Western Fuel Company.

Vessel: Hornelen.

From: Nanaimo

Arrived: Jun. 23, 1907.

Kind of Entry:

DEPOSIT

Marks, Quantity, and Contents:

5975 Tons Coal

Liquidated.

Jul. 9, 1907.

*Consular officers will leave all of above indorsement blank. It is to be filled in only at the custom-house at the port of entry.

P. W. BELLINGALL.

[U. S. Exhibit—Sample Bill of Lading Attached to Consumption Entry.]

No. 299.

Shipped in good order and Condition by the Western Fuel Company.

9496

New Wellington Coal

5975 Tons

..... Tons

..... Tons

..... Tons

5975 Tons

Total

On board the Steamer called the "Hornelen" whereof Neilsen is Master now lying at the Port of Nanaimo, Vancouver Island and bound for San Francisco, Cal. Five thousand nine hundred and seventy-five Tons, New Wellington Coal. Being marked and numbered as in the Margin are to be delivered in like order and condition at the Port of San Francisco, Cal. (The dangers of the sea only excepted) unto Western Fuel Co., or to their Assigns they paying freight for said Coal.

In Witness Whereof the Master or Purser of said Vessel hath affirmed to Four Bills of Lading all of this tenor and date; one of which being accomplished, the others to stand void.

Dated at Nanaimo, V. I., the 18th day of June, 1907.

S. NEILSEN,
Master.

[U. S. Exhibit—Sample of Consumption Entry.]

CONSUMPTION ENTRY.

ENTRY OF MERCHANDISE Imported by Western Fuel Company, in the Nor. Str. "Hornelen" whereof Nelson is Master, from Nanaimo, on the day of Jun. 23, 1907. San Francisco, Jun. 24, 1907. Date of Arrival Jun. 23, 1907

Marks. Nos. Pkgs. (Specifications as per accompanying invoice.)

Quantity. Value. Spec. 67¢ Ton.

Invoice dated at

5975 Tons Coal
Btms. Weigh

5975 \$23900,—

5975 Tons

\$23900,—

Jun. 24, 1907
9496

T. C.
[Written in red ink]: 5979—15—3—16

\$23900—5975—67¢ \$4003.25
L.

T.
[Written in red ink]: \$23900—5979¼—67 4006.43

Deposit \$4003.25
Duty 4006.43
Due U. S.
Excess 3.18

Cashier's Office, Custom House.
DUTY PAID
Jun. 25, 1907
San Francisco

[Stamped]: Appraiser's Store. U. S. Appraiser will Examine at
Wharf Before Delivery. L.
WESTERN FUEL COMPANY.
GEO. H. PROBASCO,
Atty.-in-Fact.

B.

DISTRICT AND PORT OF SAN FRANCISCO, CAL.

Declaration of Consignee, Importer or Agent

I, do solemnly and truly declare that I am the consignee (importer or agent) of the merchandise described in the annexed entry and invoice; that the invoice and bill of lading now presented by me to the Collector of SAN FRANCISCO, are the true and only invoice and bill of lading by me received of all the goods, wares, and merchandise, imported in the Nor. Str. "Hornelen" whereof Nelson is Master, from NANAIMO, for account of any person whomsoever for whom I authorized to enter the same; that the said invoice and bill of lading are in the state in which they were actually received by me, and that I do not know or believe in the existence of any other invoice or bill of lading of the said goods, wares, and merchandise; that the entry now delivered to the Collector contains a just and true account of the said goods, wares, and merchandise, according to the said invoice and bill of lading; that nothing has been, on my part, nor to my knowledge on the part of any other person, concealed or suppressed, whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; that the said invoice and the declaration therein are in all respects true, and were made by the person by whom the same purports to have been made; and that if at any time hereafter I discover any error in the said invoice, or in the account now rendered of the said goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the Collector of this District. And I do further solemnly and truly declare that to the best of my knowledge and belief WESTERN FUEL COMPANY, the owner of the goods, wares, and merchandise mentioned in the annexed entry; that the invoice now produced by me exhibits the actual cost (if purchased), or the actual market value or wholesale price (if otherwise obtained), at the time of exportation to the United States in the principal markets of the country from whence imported of the said goods, wares, and merchandise, and includes and specifies the value of all cartons, cases, crates, boxes, sacks, and coverings of any kind, and all other costs, charges and expenses incident to placing said goods, wares and merchandise in condition, packed ready for shipment to the United States, and no other or different discount, bounty, or drawback but such as has been actually allowed on the same.

Signed and declared this 24 day of }
June, 1907, before me, } GEO. H. PROBASCO.

T. J. BARRY, Deputy Collector.

A.

2904

James B. Smith et al. vs.

G.
Entry No. 9496.

IMPORTER.

WESTERN FUEL COMPANY.

Carrier Nor. Str. "Hornelen."

From Nanaimo.

Arrived Jun. 23, 1907.

Deposit June 25, 1907.....\$4003.25

Liquidated Amount\$4006.43

Excess Due U. S.\$ 3.18

Excess Due Importer\$

P. W. BELLINGALL.

[Stamped]: Cashier's Office, Custom House, San Francisco. Duty Paid.

Jul. 9, 1907.

Liquidated, Jul. 9, 1907.

[U. S. Exhibit—Sample Certificate of Delivery Attached to Consumption Entry.]

PACIFIC MAIL STEAMSHIP COMPANY

CERTIFICATE OF DELIVERY OF IMPORTED MERCHANDISE

Description of Merchandise.	By Whom Imported	How Imported	When Imported	Where Imported	Whence Imported	Quantity Tons	Value	Port of San Francisco, Aug. 15, 1907.		Remarks
								Rate of Entry	Bond Number	
Coal	Western Fuel Co	Str. Hornelen	June 23/07	San Francisco	Ladysmith	3312	13248	67¢	9496	

1907.		Entry.	Tons.
June 27—	#104—	2965½	
July 2	#1	346½	
[Written in red ink:]			
		3312	Out

I, Jas. B. Smith, Vice-pres. & a stockholder, Western Fuel Company, do solemnly swear that the Merchandise herein described was imported as herein stated; that the duties were paid thereon, as herein shown, with out allowance or deduction for damage or other cause, except as herein set forth, and that the said Merchandise has been delivered to Pacific Mail Steamship Co., and that no other certificate of delivery covering the above Merchandise has been issued by me.

Sworn to before me this Aug. 15, 1907.

GEO. H. PROBASCO,

Notary Public for the City and County of San Francisco, State of California. Commission expires April 11, 1909.

JAMES B. SMITH, Importer.

[U. S. Exhibit—Sample Weigher's Return Attached to Consumption Entry.]

Cat. No. 923.

Art. 1665, Customs Regs., 1899.

Return of Coal measured and weighed from on board the "Hornelen,"
whereof..... is Master, from Nanaimo

UNITED STATES CUSTOMS SERVICE.

Manifest No. 9496

Date of Entry. To Whom Consigned as Permitted.
Western Fuel Co.
5975 Tons Coal (Excess 4 1780 Tons)
2240

No. of Bushels.

Average
Weight per
Bushel.

No. of Tubs.

Weight of
Each Tub.

Whole Number
of Pounds.
13,394,740

Tons.
5979

Cwt. Qrs. Lbs
15 3 16

Port of San Francisco, Jul 1, 1907.

T. L WOOSTER,
Weigher.

[U. S. Exhibit—Sample Drawback entry.]

A S 41

(Articles 1206–1209 Customs Regulations of 1899)

PACIFIC MAIL STEAMSHIP COMPANY

ENTRY OF COAL FOR USE ON BOARD STEAM VESSELS

Entry of Coal intended to be shipped under official supervision by the Pacific Mail Steamship Company, and to be used for fuel on board the Am. Stm. "Korea." Sandberg, Master, a vessel propelled by steam, duly registered under the laws of the United States, and engaged in Foreign Trade, now in port.

Quantity	Date of Importation	Importing or Transporting Vessel	Amount of Duty
2965½ 3000 Tons Entry No. 9496	23 June 24, 1907	Str. "Hornelin."	\$1986.88 JSH
Vessel Cleared For	Hongkong	Pacific Mail Steamship Co. By J. S. Mattoon, Attorney in Fact.	

I do solemnly, sincerely, and truly declare that the Coal described in the within entry, and now at vessel is intended to be used for fuel on board the above described vessel and not to be re-landed at any place or port within the United States, and that all of said coal was duly imported and that the duties thereon were paid at the port of San Francisco on or about 25th day of June, 1907.

J. S. MATTOON.

Port of San Francisco.

Declared before me, this — day of Jun. 27, 1907.

T. J. BARRY, Deputy Collector.

A

Port of San Francisco, Jun. 27, 1907.

To the Surveyor of the Port:

You will direct an inspector to superintend the transfer and lading of the Coal described in the accompanying entry on board the steamer Am. Stm. "Korea" and when such Lading is completed to make due return to that effect.

T. J. BARRY, Deputy Collector.

A

.....Deputy Naval Officer.

AHF.

AW.

Port of San Francisco, Jul. 9, 1907.

I have superintended the transfer and lading of the within described Coal on board the Am. Stm. "Korea."

Weight 2965 1385/2240 Tons Coal.

Korea cleared July 8–07.

O. E. A.G. Aug. 6 "

JOHN A. ROSS, Inspector.

F. L. WOOSTER, Weigher.

PACIFIC MAIL STEAMSHIP CO.

1907–1908, Debenture No. 4236.

CLAIMANT.

Export Vessel Am. Stm. "Korea."

For Hong Kong.

Date of Clearance July 8, 1907

Drawback, \$1986.88

No. 104.

To the District Inspector

Acting Deputy Surveyor

June 27, 1907, 2:20 P. M.

MATTOON & COMPANY

Custom House Brokers

San Francisco

[U. S. Exhibit—Partial List of Shortages During Years 1906 to 1912, Inclusive,
etc.]

PARTIAL LIST OF SHORTAGES IN CARGOES OF COAL IMPORTED BY WESTERN
FUEL CO., DURING YEARS 1906-1912, INCLUSIVE, AND PERCENTAGES OF SAID
SHORTAGES, BASED ON INVOICE WEIGHTS.

Year	Month	Entry No.	Vessel	Invoice Weight Tons	Ascertained Weight.		Short	Percentage of
					Tons	Lbs.		
1906	May	5634	Terje Viken	5710	5544	1080	165	1160 2.9
"	July	8409	"	5743	5603	730	139	1510 2.4
"	"	9350	"	5700	5515	790	184	1450 3.2
"	Sept.	12586	"	5861	5619	1200	241	1040 4.-
1907	July	11942	Tellus	3630	3541	160	88	2080 2.4
"	Sept.	—	Wellington	2310	2247	1390	62	850 2.7
"	May	14539	Indian Monarch	5757	5598	200	158	2040 2.7
1908	May	6191	Yeddo	3211	3013	860	197	1380 6.-
"	July	9499	Thor	7287	7134	1270	152	970 2.-
"	"	9297	Titania	5847	5722	640	124	1600 2.1
"	Aug.	10429	Tordenskjold	5980	5758	1440	221	800 3.7
"	Sept.	11573	"	5892	5738	1610	153	630 2.6
1909	May	6375	Wellington	2300	2202	2160	97	80 4.2
"	July	9427	Titania	5840	5704	20	135	2220 2.3
"	Aug.	10847	"	5901	5725	1680	175	560 2.9
"	"	10355	Wellington	2292	2225	450	66	1790 2.9
"	Sept.	12084	Tordenskjold	5998	5786	570	211	1670 3.5
1910	June	7156	Leelanaw	2850	2725	880	124	1360 4.3
"	July	8582	Jethon	6871	6715	1291	155	949 2.2
"	"	8186	Leelanaw	2823	2653	550	169	1690 6.-
"	Aug.	10742	Manhattan	6994	6786	1345	207	895 2.9
"	"	9707	Leelanaw	2869	2808	820	60	1420 2.1
"	Sept.	12019	"	2867	2764	1550	102	690 3.5
"	"	12924	"	2849	2716	590	132	1650 4.6

Year	Month	Entry No.	Vessel	Invoice Weight Tons	Ascertained Weight.		Short		Percentage of
					Tons	Lbs.	Tons	Lbs.	
1911	July	1022	Coulsen	6598	6413	230	184	2010	2.8
"	Aug.	1278	Tricolor	4415	4284	1130	130	1110	2.9
"	"	11784	Candidate	3067	2932	2230	134	10	4.3
1912	May	8853	Wellington	2434	2329	1720	104	520	4.2
"	"	8864	Georgiana	1387	1356	1550	30	690	2.1
"	"	8810	Kehala	1273	1227	220	45	2020	3.6
"	June	10298	Wellington	2415	2306	1270	108	970	4.4
"	"	10810	Christian Bors.	7047	6880	1170	166	1070	2.3
"	"	9471	Dunsyre	3490	3413	1980	76	260	2.1
"	"	9448	Battle Abbey	2305	2244	2017	60	223	2.6
"	July	11822	Wellington	2415	2348	2090	66	150	2.7

[Endorsed]: No. 2576. U. S. Circuit Court of Appeals for the Ninth Circuit. U. S. Exhibit Partial List of Shortages in Cargoes of Coal Imported by Western Fuel Co., during years 1906-1912 etc. Received and Filed March 4, 1915. F. D. Monekton, Clerk.

**[U. S. Exhibit — Statement of Invoice Weight,
Ascertained Weight, Shortages and Overages
of Coal from January 6, 1903, to October 22,
1907.]**

STATEMENT OF CARGOES OF COAL RECEIVED FROM NEW-
CASTLE, AUSTRALIA, JANUARY 6th, 1913, TO
OCTOBER 22d, 1907.

1903

Date of Arrival	Vessel	Invoice		Ascertained			
		Wt. Tons	Wt. Tons	Short Lbs.	Short Tons	Over Lbs.	Over Tons
Feb. 4	Achnashie	3970	3922	48			
Apr. 17	Asniers	{ 2260	2272			12	
		{ 1560	1468	92			
Sep. 14	Anne de Bretagne	2804	2813			9	
"	Acamos	3000	2974	26			
Oct. 19	Alsterufer	4168	4044	124			
" 21	Anjor	2727	2677	50			

1904

Feb. 8	Alice A. Leigh	4442	4459			17	
May 27	Adderley	1870	1841	29			
Sept. 19	A. J. Fuller	2460	2431	29			
Oct. 16	Acamos	2980	2965	15			
Dec. 6	Andromeda	1856	1850	6			
Nov. 17	Ardeneraig	3080	3053	27			

1905

Mar. 16	Adderley	1860	1848	12			
June 16	Annesley	2370	2374			4	
Aug. 11	Armen	2930	2972			42	

1906

Apr. 23	Andromeda	1716	1736			20	
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1907

Jan. 12	African Monarch	5327	5316	11			
Feb. 2	Aymeric	5800	5766	34			
" 21	Andromeda	1756	1763			7	
May 11	Antiope	2036	2036				
	Forward	60972	60580	503		111	

Date of Arrival	Vessel	Invoice	Ascertained	Short.	Over
		Wt. Tons	Wt. Tons		
	Forward	60972	60580	503	111
May 1, 1907	African Monarch	5402	5405		3
June 3, "	Arrow	4890	4903		13
Aug. 28, "	Admiral Boreson	5270	5320		50
" 30, "	A. J. Fuller	2410	2432		22
Sept. 20, "	Aeon	5789	5772	17	
Mar. 3, 1903	Battle Abbey	2277	2277		
Sept. 16, 1904	Bracadale	2988	2968	20	
Oct. 31, "	Brenn	2956	2985		29
Nov. 26, "	Belford	3030	3007	23	
Jan. 21, 1905	Bassuet	3000	2931	69	
Nov. 23, "	Balmoral	3720	3753		33
Dec. 18, "	Belen	2960	2978		18
May 29, 1906	Beaumontier	2195	2161	34	
Feb. 8, 1907	Boverie	5689	5828		139
Sep. 5, "	Barkston	5831	5735	96	
" 14, "	Bromley	3998	3956	42	
Mar. 4, 1903	Chateau D'if	3000	2973	27	
May 27, "	Columbia	2193	2225		32
June 23, "	Claverdon	3675	3609	66	
Aug. 18, "	Chelmsford	3750	3729	21	
" 20, "	Clock	2326	2306	20	
" 31, "	Crown of England	2734	2707	27	
	Forward	141055	140540	965	450

Date of Arrival	Vessel	Invoice	Ascertained	Short.	Over
		Wt. Tons	Wt. Tons		
	Forward	141055	140540	965	450
Aug. 31, 1903	California	3765	3747	18	
Sept. 29, "	Cambuskenneth	2962	2926	36	
June 18, 1904	Carrollton	2220	2193	27	
Aug. 1, "	Chas. B. Kenney	1573	1577		4
Oct. 10, "	Clan Graham	3261	3288		27
" " "	County of Inverness	2350	2346	4	
Dec. 29, "	Canrobert	2446	2425	21	
Mar. 16, 1905	Challenger	2120	2133		13
June 16, "	County of Inverness	2360	2368		8
Oct. 21, "	Clan Graham	3352	3370		18
Nov. 30, "	Cape Antibes	3540	3570		30
Jan. 30, 1906	Comerie	4701	4705		4
Feb. 16, "	Calcutta	2576	2613		37
Mar. 8, 1907	Como	5866	5927		61
Aug. 6, "	Craighall	4853	4790	63	
Sept. 11, "	Corso	4272	4300		28
Apr. 26, 1903	Duncraigh	2834	2862		28
June 25, "	Dalgonar	3894	3824	70	
Sept. 14, "	Ditton	4180	4182		2
Oct. 9, "	Delcairnie	2790	2796		6
Mar. 15, "	Drummuir	2770	2780		10
" 11, 1907	Duncliffe	5400	5404		4
Sept. 11, "	Don of Airlie	4022	4050		28
	Forward:	219162	218716	1204	758

Date of Arrival	Vessel	Forward	Invoice	Ascertained		Over Tons
			Wt. Tons	Wt. Tons	Short. Tons	
			219162	218716	1204	758
Jan. 6, 1903	Elleric		4557	4581		24
Feb. 18, "	Elm Branch		4258	4308		50
Sept. 18, "	Empereur Menelick		2757	2738	19	
" 19, "	Emma Laurens		2980	2945	35	
" 23, "	Edonard Detaille		2960	2936	24	
Oct. 14, "	Ernest Reyer		3263	3268		5
" 17, "	Ernest Siegfried		3692	3694		2
" 20, "	Euphrosyne		2855	2831	24	
" 15, 1904	Elwell		2110	2104	6	
" 18, "	Ernest Reyer		3100	3115		15
Dec. 24, "	E. B. Jackson		1126	1164		38
Nov. 2, "	Emma Laurans		2817	2868		51
July 23, 1907	Earl of Douglas		5898	5962		64
Sept. 2, "	Elsa		4860	4895		35
Feb. 17, 1907	Foreric		5185	5139	46	
July 20, "	"		5158	5218		60
Sept. 17, 1903	Glenlui		2775	2753	22	
Sept. 30, "	Gunford		3600	3715		115
Oct. 20, "	Gen. Roberts		2856	2832	24	
" 23, "	Gen. Gordon		2456	2414	42	
Sept. 15, 1904	Gen. de Negrier		2929	2938		9
Oct. 15, "	Geo. E. Billings		1847	1843	4	
Forward:			293201	292977	1450	1226

Date of Arrival	Vessel	Invoice	Ascertained	Short. Tons	Over Tons
		Wt. Tons	Wt. Tons		
	Forward	293201	292977	1450	1226
Dec. 22, 1904	Gail	2909	2868	41	
Nov. 3, 1905	Grand Duchess	2736	2762		26
Mar. 26, 1903	Hoche	2940	2934	6	
July 18, "	Hollywood	2580	2547	33	
Apr. 11, 1904	Henry Fairling	2457	2438	19	
July 19, "	Holliswood	1571	1575		4
Feb. 24, 1905	Henry Failing	2466	2405	61	
Mar. 11, 1906	Housatanic	3220	3281		61
Apr. 14, "	Henley	4021	4006	15	
Jan. 31, 1907	Henry Failing	2411	2436		25
Mar. 13 "	Harbart	4790	4799		9
Aug. 30, "	Hawaiian Isles	3336	3306	30	
Oct. 4, "	Hercules	5712	5655	57	
Aug. 11, 1903	Inverclyde	2707	2733		26
" 26, "	Inveresk	2240	2356		116
Sept. 14, "	Imberhorns	2990	2962	28	
Oct. 13, "	Iredale	3010	2937	73	
Aug. 18, 1904	Invercauld	2307	2337		30
Dec. 28, 1905	Invermark	2270	2289		19
" 18, "	Invercoe	2304	2301	3	
Mar. 19, 1906	Indradeo	5024	4797	227	
Apr. 2, 1907	Irish Monarch	5726	5727		1
Forward:		362928	362428	2043	1543

Date of Arrival	Vessel	Invoice	Ascertained	Short. Tons	Over Tons
		Wt. Tons	Wt. Tons		
	Forward	362928	362428	2043	1543
May 3, 1905	Jabez Howse	2240	2212	28	
July 2, 1906	Jas. Johnson	1674	1663	11	
Sep. 17, "	Juterpolis	4330	4394		64
Oct. 26, "	Jane Guillon	2900	2937		37
Aug. 16, 1907	Jethou	5880	5916		36
Feb. 18, 1903	Kilmeny	2545	2543	2	
July 19, 1904	Kahala	1311	1278	33	
Nov. 14, 1905	Kirkle	4690	4746		56
Mar. 10, 1907	"	4645	4629	16	
Aug. 23, "	Kalamo	5784	5827		43
Jan. 29, 1903	Lismore	2354	2314	40	
July 9, "	Lock Tarredon	2930	3019		89
" 22, "	Lock Carron	2920	2950		30
Aug. 26, "	Lightbody	3272	3247	25	
Sept. 18, "	Leon Bureau	2683	2678	5	
Oct. 23, "	Leverbank	3795	3829		34
July 27, 1904	Lyman D. Foster	1181	1164	17	
" " "	Lord Templetown	3134	3113	21	
Aug. 4, "	Lindfield	3500	3486	14	
Nov. 4, "	Lady Doris	2974	2973	1	
Aug. 4, 1905	La Perouse	2860	2884		24
July 13, "	London Hills	3260	3269		9
May 12, 1907	Lord Templetown	3180	3162	18	
	Forward	436970	436661	2274	1965

Date of Arrival	Vessel	Invoice	Ascertained		
		Wt. Tons	Wt. Tons	Short. Tons	Over Tons
	Forward	436970	436661	2274	1965
May 27, 1903	Melanope	2247	2209	38	
July 9, "	Marie Molinos	2530	2546		16
Aug. 5, "	Marlborough Hill	3568	3517	51	
" 26, "	Matterhorn	2898	2809	89	
May 27, 1904	Melanope	2249	2257		8
Dec. 17, "	Marechal de Villars	2950	2951		1
Nov. 28, "	Max	2500	2500		
" 12, "	Marguerite Dolfus	2560	2576		16
July 27, 1905	Martha Roux	2470	2462	8	
Nov. 14, "	Montebello	3035	3046		11
Oct. 26, 1903	Norma	3466	3418	48	
Nov. 7, 1904	Notre Dame d'Arvor	3090	3044	46	
Apr. 5, 1907	Norman Isles	4694	4797		103
Jan. 29, 1903	Oranasia	4040	4032	8	
Aug 17, 1904	Osterbeck	2430	2407	23	
Apr. 1, 1906	Oceano	6018	6008	10	
Sept. 14, 1903	Pericles	2109	2120		11
Aug. 20, 1904	Puako	2088	2091		3
Oct. 29, 1906	Pierre Antonine	2964	2984		20
May 2, 1904	Reuce	2440	2422	18	
Sept. 25, "	Reaper	1823	1814	9	
	Forward	499139	498671	2622	2154

Date of Arrival	Vessel	Forward	Invoice	Ascertained	Short.	Over
			Wt. Tons	Wt. Tons		
			499139	498671	2622	2154
Nov. 14, 1904	Rene		2990	3006		16
July 21, 1906	Radiant		3060	3127		67
May 29, 1907	Reuce		2340	2340		
Jan. 29, 1903	Strathgrife		3520	3521		1
June 23, "	St. Frances		2476	2467	9	
Sept. 2, "	Slieve Bawn		2492	2465	27	
" 14, "	Siam		2541	2486	55	
Oct. 26, "	Scottish Lochs		3948	3887	61	
" 31, "	Saragossa		3880	3850	30	
Mar. 4, 1904	St. Mirren		3200	3145	55	
May 21, "	Sea King		2170	2123	47	
June 18, "	Servia		2400	2348	52	
July 19, "	St. David		2180	2173	7	
Oct. 15, "	Steinbeck		2730	2733		3
Apr. 17, 1905	St. James		2222	2191	31	
" 23, "	Sea King		2114	2104	10	
" 15, 1907	St. Helena		5666	5695		29
" 30, "	Sea King		{ 5 2130	5 2138		8
July 31, "	Strathspey		6138	6130	8	
Sept. 14, "	Scottish Monarch		5852	5763	89	
Oct. 6, "	Strathnairn		6007	6017		10
June 12, 1903	Thalatta		2735	2717	18	
Aug. 18, "	Tellus		3187	3160	27	
	Forward		575122	574262	3148	2288

Date of Arrival	Vessel	Invoice	Ascertained		Over
		Wt. Tons	Wt. Tons	Short. Tons	
	Forward	575122	574262	3148	2288
Aug. 20, 1904	Thornliebank	3279	3343		64
Jan. 16, 1905	Thomas P. Enright	1638	1626	12	
Dec. 27, 1906	Thyra	2895	2874	21	
Mar. 13, 1907	Tiberius	5682	5691		9
July 9, "	Thyra	5385	5386		1
Jan. 24, "	Thode Fegelund	6145	6061	84	
Sept. 26, "	Terje Viken	4990	5021		31
Oct. 27, "	Versailles	2998	2993	5	
Feb. 8, 1906	Vermont	5408	5344	64	
Oct. 27, "	Versailles	2998	2993	5	
Sept. 23, 1903	Wasdale	2717	2683	34	
Oct. 31, "	Whitleburn	3310	3310		
" " "	West Lothian	2454	2430	24	
May 2, 1904	Wm. H. Smith	2418	2377	41	
" 27, "	Wm. Bowden	1193	1197		4
July 19, "	Woolahara	1450	1440	10	
Sept. 10, "	Weathersfield	1489	1492		3
Nov. 27, "	Wm. Nottingham	1736	1729	7	
July 8, 1907	Willscott	3241	3267		26
" 23, "	Wm. H. Smith	2410	2393	17	
June 12, 1903	Yeddo	6116	5882	234	
Aug. 5, 1907	"	5803	5842		39
Total		650,910	649,638	3737	2465

Total net Shortage 1272 Tons=19/100 of 1%

[Endorsed]: No. 2576. U. S. Circuit Court of Appeals, for the Ninth Circuit. U. S. Exhibit Statement of Cargoes of Coal Received from Newcastle Australia, 1903-1907. Received and Filed March 4, 1915. F. D. Monckton, Clerk.

[Defendants' Exhibit "KK"—Summary of Coal In and Out of Barges.]

WESTERN FUEL COMPANY
SUMMARY OF COAL IN AND OUT OF BARGES

Year	Coal In Tons	Coal Out Tons	Overage Tons	Underage Tons	Balance Left Over Tons	Net Overage Tons	Percentage of Net Overage on Coal In
	Lbs.	Lbs.	Lbs.	Lbs.	Lbs.	Lbs.	
1904	111,580	115,800	4,288	68	1,174	4,220	3.78
1905	114,082	119,898	5,849	33	464	5,815	5.09
1906	124,859	129,956	5,237	140	1,628	5,096	4.09
1907	93,103	98,678	5,684	89	1,044	5,575	5.98
1908	106,831	112,203	5,551	169	1,203	5,372	5.03
1909	94,860	98,534	3,802	128	74	3,674	3.87
1910	101,385	107,926	6,620	78	1,143	6,541	6.45
1911	104,125	108,940	6,027	333	2,129	4,815	4.62
1912	103,019	108,489	5,497	27	717	5,470	5.31
	953,845	1,000,428	48,559	1,069	907	46,582	4.88

[Endorsed]: 5233. United States vs. Howard, et al. Def'ts. Exhibit "KK." Feb. 10/14, M. B. M., Clerk.

No. 2576. U. S. Circuit Court of Appeals for the Ninth Circuit. Defendants' Exhibit "KK." Received and Filed Meh. 4, 1915. F. D. Monekton, Clerk.

[Defendants' Exhibit "SS"—Summary of Coal In and Out of Barges.]

WESTERN FUEL COMPANY
SUMMARY OF COAL IN AND OUT OF BARGES

Year	Coal In		Coal Out		Overage		Underage		Balance		Net Overage		Percentage of Net Overage on Coal In
	Tons	Lbs.	Tons	Lbs.	Tons	Lbs.	Tons	Lbs.	Tons	Lbs.	Tons	Lbs.	
1904	111,580	209	115,800	634	4,288	1,599	68	1,174			4,220	425	3.78
1905	114,082	953	119,898	843	5,849	354	33	464			5,815	2,130	5.09
				394		568						1,180	
1906	124,859	1,454	129,956	444	5,237	618	140	1,628			5,096	1,220	4.09
1907	93,103	113	98,678	1,891	5,684	1,766	89	1,044	19	1,184	5,575	1,778	5.98
1908	107,680	1,483	113,069	1,245	5,579	240	181	565	8	2,153	5,388	2,002	5.00
1909	94,860	470	98,534	1,569	3,802	1,173	128	74			3,674	1,099	3.87
1910	101,385	60	107,819	1,236	6,513	79	78	1,143			6,434	1,176	6.34
			108,653	923			71	1,188			5,140	1,774	4.96
1911	103,512	489	108,653	923	6,091	122	333	2,129	878	1,640	4,878	833	4.71
			108,489	438			262	941			262	941	
1912	103,019	342			5,497	813	27	717			5,470	96	5.31
Surplus Items.—	760.	1829—			2,234		1,080	2,118	907	497	46,554	1,062	4.88
					48,542								
Bunkers or Yard,	954,082	1,093	1,093,337	619							46,817	460	4.90
							818	1,277			760.	1,829	
	760.	1829—	1,000,899	1,553							*47,578.	49	4.99
			760.	1829									
	953,321,	1504	1,000,138	1,964									
	8,733,	710	8,733,	710									
	944,588	.794	992,166	.843									

The Surplus items included amount to 760,1829 or .09%.
If Items left over excluded makes difference of .10%.

[Endorsed]: No. 5233. United States vs. Howard, et al. Defts'. Exhibit "SS." W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. 2/13/14.
No. 2576. U. S. Circuit Court of Appeals for the Ninth Circuit. Defendants' Exhibit "SS." Received and Filed Mch. 4, 1915. F. D. Monckton, Clerk.

3
No. 2576

IN THE
United States Circuit Court of Appeals
For the Ninth Circuit

JAMES B. SMITH, F. C. MILLS and E.
H. MAYER,

Plaintiffs in Error,

* VS.

THE UNITED STATES OF AMERICA,
Defendant in Error.

BRIEF FOR PLAINTIFFS IN ERROR.

MORRISON, DUNNE & BROBECK,
A. P. BLACK,
STANLEY MOORE,
Attorneys for Plaintiffs in Error.

Filed this.....*day of October, 1915.*

FRANK D. MONGKTON, Clerk.

By.....*Deputy Clerk.*

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No. 2576

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

JAMES B. SMITH, F. C. MILLS and E.
H. MAYER,

Plaintiffs in Error,

vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

BRIEF FOR PLAINTIFFS IN ERROR.

Statement.

On February 27, 1913, an indictment was presented in the District Court against eight defendants, namely, John L. Howard, James B. Smith, J. L. Schmitt, Robert Bruce, Sidney V. Smith, F. C. Mills, E. H. Mayer, and Edward J. Smith. The charge was, that these defendants had conspired to defraud the United States, and the fraud was described to be the manipulation of the scales used in the weighing of dutiable coal, "to the end that said scales should record the weights of said coal desired by the defendants, and not the true weights of the coal placed thereon" (transcript, p. 7); "for

the purpose that the defendants, acting under the name and guise of said Western Fuel Company aforesaid, should receive the profit and gain to be made by such incorrect and fraudulent weights'' (p. 8).

The mention of the Western Fuel Company leads us to say that the company was in the business of importing coal into San Francisco, selling it to the retail trade there, and selling it, as well, to steam vessels plying between San Francisco and other ports, like the steamships of the Pacific Mail Steamship Company. The Pacific Mail was an American company, and, as such, and doubtless as a policy in encouragement of American marine, was entitled to get back—"draw-back" is the word used in the statute—from the government the amount in money of the duties which were paid to the government on the imported coal, bought by the steamship company and burned in its American ships. This draw-back would be figured on the weight of the coal bought and burned; and the fraudulent manipulation of the scales is made by this indictment to include, not only the scales on which the coal imported by the Western Fuel Company was weighed in the first instance, as it was unloaded from the ship that brought it to San Francisco, but as well the scales, on which so much of that coal as the Pacific Mail bought and burned, is alleged to have been weighed when delivered from the barges of the Western Fuel Company into the holds of the Pacific Mail liners.

Of these eight defendants, five were directors of the Western Fuel Company, namely: John L. Howard, the president; James B. Smith, the vice president; J. L. Schmitt, the treasurer; Robert Bruce, and Sidney V. Smith. The other three defendants, F. C. Mills, E. H. Mayer, and Edward J. Smith were employes. John L. Howard died during the trial, while the government was putting in its case. When the government rested, a motion to dismiss the case and for the entry of a verdict of not guilty, with respect to the defendants J. L. Schmitt, Robert Bruce and Sidney V. Smith—indeed, as to all the defendants—was made to the court on the ground that there was no evidence to support the charge of the indictment. This motion was granted as to the defendants J. L. Schmitt, Robert Bruce, Sidney V. Smith; it was denied as to the other defendants—John L. Howard having now passed by death from the scene—and as to them the trial proceeded to a verdict.

Edward J. Smith, one of the employes, was acquitted. James B. Smith, the remaining director and vice president, was convicted, also the two employes F. C. Mills and E. H. Mayer. They bring the case here in error.

I.

As a Matter of Law, the Judgment Should be Reversed, and This Upon the Clear Ground That There Was no Evidence, Sufficient in Law, or at All, to Connect the Defendants James B. Smith, F. C. Mills and E. H. Mayer, All or Any of Them, With the Conspiracy to Defraud Which This Indictment Proceeds Upon.

RULE AS TO INSUFFICIENCY OF EVIDENCE.

In *Union Pacific Coal Company against United States*, Circuit Court of Appeals, 8th Circuit, before Sanborn and Van Devanter, Circuit Judges, and William H. Munger, District Judge, 173 Fed. 738, 740, it is said in the opinion of the court, delivered by Sanborn, Circuit Judge:

“There was a legal presumption that each of the defendants was innocent until he was proved to be guilty beyond a reasonable doubt. The burden was upon the government to make this proof, and evidence of facts that are as consistent with innocence as with guilt is insufficient to sustain a conviction. Unless there is substantial evidence of facts which exclude every other hypothesis but that of guilt, it is the duty of the trial court to instruct the jury to return a verdict for the accused; and where all the substantial evidence is as consistent with innocence as with guilt, it is the duty of the appellate court to reverse a judgment of conviction.” (Citing many cases, federal and state.)

**PARTICULARITY OF ALLEGATION IN INDICTMENT
FOR CONSPIRACY.**

Section 5440 of the Revised Statutes, preserved in Section 37 of the Criminal Code, reads:

“If two or more persons conspire either to commit any offense against the United States, *or to defraud the United States in any manner or for any purpose*, and one or more of such parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be liable to a penalty of not more than ten thousand dollars, or to imprisonment for not more than two years, or to both fine and imprisonment in the discretion of the Court.”

The language of this statute is generic—extremely so; it makes no statement of the species of fraud, it does not descend to particulars. “In any manner or for any purpose”—to defraud the United States in any manner or for any purpose,—this is the language. Manifestly, an indictment going upon such general and bald expressions, charging a defendant with conspiracy to defraud the United States in any manner, without further specification, or for any purpose, without further description, would not be clear to the accused; it would not be certain at all, it would not apprise him of the crime with which he stands charged. It would be required of the pleader, in writing the indictment, to give such a description of the offense as to identify it, and thus make it possible for the defendant to prepare his defense, and avail himself of the judgment, when it came, as a bar to further prosecution; and this duty would be upon the pleader, again, in aid of the court, to advise it of the facts relied upon, to the end that it may determine their sufficiency in law to support a judgment.

The Supreme Court of the United States, in *United States against Cruikshank*, 92 U. S. 542, 557-8, said:

“In criminal cases, prosecuted under the laws of the United States, the accused has the constitutional right ‘to be informed of the nature and cause of the accusation’. Amend. VI. In *United States v. Mills*, 7 Pet. 142, this was construed to mean, that the indictment must set forth the offence ‘with clearness and all necessary certainty, to apprise the accused of the crime with which he stands charged’; and in *United States v. Cook*, 17 Wall. 174, that ‘every ingredient of which the offence is composed must be accurately and clearly alleged’. It is an elementary principle of criminal pleading, that where the definition of an offence, whether it be at common law or by statute, ‘includes generic terms, it is not sufficient that the indictment shall charge the offence *in the same generic terms* as in the definition; but it must state the species—it must descend to particulars. 1 Arch. Cr. Pr. and Pl., 291. The object of the indictment is, first to furnish the accused with *such a description of the charge* against him as will enable him to make his defence, and avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and, second, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. For this, *facts are to be stated*, not conclusions of law alone. A crime is made up of *acts and intent*; and these must be set forth in the indictment, *with reasonable particularity of time, place and circumstances*”.

These are fundamental things, and their bearing and gravity must be taken into the mind, if the law is to be administered, and the rights of these de-

endants are to be protected, in the case now at bar. The Supreme Court of the United States, again, in *United States against Hess*, 124 U. S. 486, was considering a statute

“directed against ‘devising or intending to devise any scheme or artifice to defraud’, to be effected by communication through the post office. As a foundation for the charge”, the court went on, “a scheme or artifice to defraud must be stated, which the accused either devised or intended to devise, *with all such particulars as are essential to constitute the scheme or artifice*, and to acquaint him with what he must meet on the trial”.

The court said further:

“The statute upon which the indictment was founded only describes the general nature of the offence prohibited; and the indictment, in repeating its language without averments disclosing the particulars of the alleged offence, states no matter upon which issue could be formed for the submission to a jury.

“The averment here”, says the court, “is that the defendant ‘having devised a scheme to defraud divers other persons to the jurors unknown’, intended to effect the same by inciting such other persons to communicate with him through the post office, and received a letter on the subject. Assuming that this averment of ‘having devised’ the scheme, may be taken as sufficiently direct and positive, the absence of *all particulars of the alleged scheme* renders the count as defective as would be an indictment for larceny without stating the property stolen, or its owner, or party from whose possession it was taken.”

The court goes to the point that a pleading in the language of the statute would be sufficient:

“The doctrine invoked by the solicitor general, that it is sufficient, in an indictment upon a statute, to set forth the offence in the words of the statute, does not meet the difficulty here. Undoubtedly the language of the statute may be used in the general description of an offence, but it must be accompanied with *such a statement of the facts and circumstances* as will inform the accused of the *specific offence*, coming under the *general description* with which he is charged.”

The language from the *Cruikshank* case, which we have given above, is now quoted, and the court says, in conclusion:

“Following this rule, it must be held that the second count of the indictment before us, does not *sufficiently describe* an offence within the statute. The essential requirement, indeed, *all the particulars* constituting the offence of *devising a scheme to defraud*, are wanting. *Such particulars are matters of substance and not of form*, and their omission is not aided or cured by the verdict.”

The general term or notion, a conspiracy to defraud, has no existence outside the mind—in itself, it is only a mental abstraction; it acquires objective validity and a real, concrete identity, only when it is clothed with the particularity of some specific conspiracy to defraud, of this, that, or the other kind, susceptible of a description that will identify it. “Of course” as the court said in *United States v. Grunberg*, 131 Fed. 138,

“there are various ways of defrauding the customs. Parties may conspire to defraud by smuggling in goods at night; they may conspire to defraud by bribing the custom house

officers; they may conspire to defraud by forging invoices; they may conspire to defraud by false invoices; and a pleader must ordinarily show, in a general way, which of those methods the parties intended. The indictment must go at least so far as to point out something as to the way in which the parties intended to defraud, because there cannot be a conspiracy known to the Grand Jury, without some knowledge of the general line in which it was to march."

Or, as the court puts it in the *Greene* case, 52 Fed. 104, 112:

"Whether the accused is charged with an offence is to be determined *by the particular acts or facts set forth*, and not by the conclusions of the pleader, although asserted in the words of the statute: 'Every offence consists of *certain acts done or omitted under certain circumstances*, and in the indictment for the offence it is not sufficient to charge the accused *generally* with having committed the offence, but *all the circumstances* constituting the offence must be *specially set forth*.'" (Citing *United States against Cruikshank*, 92 U. S. 542, 563.)

In *Keck against U. S.*, 172 U. S. 434, 437, the indictment alleged that Keck, on a date named, "did knowingly, wilfully, and unlawfully import and bring into the United States, and did assist in importing and bringing into the United States, to-wit: into the Port of Philadelphia" diamonds of a stated value, "contrary to law and the provisions of the Act of Congress in such cases made and provided, with intent to defraud the United States." The Supreme Court said:

“As is apparent, the alleged offence averred in this count was charged substantially in the words of the statute. In the argument at bar counsel for the United States conceded the vagueness of the accusation thus made; and, tested by the principles laid down in *United States v. Carll*, 105 U. S. 611, 612; *United States v. Hess*, 124 U. S. 483; and *Evans v. United States*, 153 U. S. 584, 587, the count was clearly insufficient. The allegations of the count were obviously *too general*, and did not sufficiently inform the defendant of *the nature of the accusation* against him. The words ‘contrary to law,’ contained in the statute, clearly relate to legal provisions not found in section 2082 itself, but we look in vain in the count for any indication of *what was relied on* as violative of the statutory regulations concerning the importation of merchandise. *The generic expression*, ‘import and bring into the United States,’ did not convey the necessary information, because importing merchandise is not *per se* contrary to law, and could only become so when done in violation of *specific* statutory requirements. As said in the *Hess* case, at p. 486: ‘The statute upon which the indictment is founded only describes the *general nature* of the offence prohibited, and the indictment, in repeating its language without averments disclosing *the particulars of the alleged offence*, states no matters upon which issue could be formed for submission to a jury.’”

In the light of these principles, we may turn to the indictment with intelligent curiosity, to see there just what the specific conspiracy to defraud is said to be, how described and identified, which these defendants are alleged to have conceived and contracted for—what the “criminal partnership”

(*United States against Kissel*, 218 U. S. 608) is, which they are said to have launched.

THE SPECIFIC CONSPIRACY DESCRIBED IN THIS INDICTMENT.

The Western Fuel Company imports coal overseas from Nanaimo, in British Columbia, from Australia, and from Japan, in ships that tie up and unload at the docks of San Francisco Harbor. Up to and including August 5, 1909, the tariff on this coal was sixty-seven cents per ton (Par. 415, Sec. 1, Tariff Act of 1897). From and including August 6, 1909, and until coal was put on the free list, the duty was lowered to forty-five cents per ton (Par. 428, Sec. 1, Tariff Act of 1909). The number of tons of coal on which the duty is figured, was ascertained, of course, by weighing the coal as it was hoisted out of the ships and on to the docks, and this weighing was done on Fairbanks scales, and by the government weighers who had charge of the operation. We are dealing now with the coal as it came to the Western Fuel Company in the first instance—not with that coal, or any part of it, as it may have been delivered subsequently by the company to a customer, to some retailer in the city, or to some steamship in the stream. Now, it is in the weighing of this coal as originally received, in the fraudulent manipulation of the scales which registered its weight—the weight on which duty was calculated—that the indictment makes its first imputation of fraud.

But there is a second process, the delivery by the company to some customer of imported coal, after that coal has passed the custom house weighing and paid its duty. Where such customer was an American steamship, of American register, plying between San Francisco and some foreign port—a Pacific Mail liner, for example, running between San Francisco and Yokohama—the statute provided, in the nature of a subsidy to our American marine, that the steamship company should be entitled to a refund from the government of the amount of duty which had been paid on that coal at the time of its importation and entry. This second process, the delivery of coal to a customer like this, was a matter between the Western Fuel Company's coal barge—an open, floating warehouse—on the one hand, and a Mail liner like the *China* or the *Mongolia*, on the other. The barge in which, as in a bunker or a yard, imported coal had been stored, was towed through the waters of the bay to the side of the steamship. The coal was then hoisted from the hold of the barge, and dropped into a chute, along which it passed down into the receiving compartment of the vessel, there to be stored until it went into the furnace of the engine-room. The Mail Company was entitled to a draw-back of the amount of duty, on every ton of that coal, and the question was, how many tons were there in a given case? That was ascertained, to an extent, by weighing; and the weighing, again, was done on scales placed on the barge, and by the customs weighers of the gov-

ernment. It is in the weighing of this coal, in the second and subsequent process of delivery to the steamship, in the fraudulent manipulation of the scales which registered its weight—the weight on which the draw-back was calculated—that the indictment makes its next imputation of fraud. Some coal delivered to transport vessels of the government is put by the indictment in the same category with the Pacific Mail coal.

The Japanese line between San Francisco and the Orient, known as the Toyo Kisen Kaisha, as being a foreign line, was not within the draw-back privilege. But in the enumeration of overt acts, in alleged furtherance of the conspiracy, it is said in the indictment (pp. 13-14) that a money payment was made to the engineer of one of the Japanese ships, “in order,” as is rather blindly alleged, “to cause, procure, and induce the engineer aforesaid, to refrain from disclosing to the officers of the United States, the existence and operation by said defendant of the said conspiracy, and thereby to enable said defendant to continue to consummate and effect the object of the said conspiracy.” This insinuation need not detain us, and for two sufficient reasons: first, because the lower court ruled out any testimony of the kind as being inadmissible; and secondly, because an alleged overt act is no part of the conspiracy, and is required by the statute merely as affording a *locus penitentiae* (*United States against Britton*, 108 U. S. 199, 204; *Hyde against Shine*, 199 U. S. 62, 76). We come back, then, to the two

outstanding things which give character to this indictment—to the fraudulent manipulation of the scales, in the first instance, on the docks where the imported coal is unloaded; and in the second place, to the fraudulent manipulation of the scales on the barges, when the coal is transferred from those barges into the hold of a “draw-back” steamship. This is the time, now, for a close inspection of the indictment.

The indictment is printed at pages 5-15 of the transcript. It begins, at page 5, by charging the defendants with conspiring to defraud the United States—not, however, generally, or “in any manner,” but “in the manner following, that is to say.”

Next, at page 6, comes the allegation that the Western Fuel Company was a corporation engaged in the importation and sale of coal, and also in purchasing coal from other importers.

Now comes the descriptive matter, carrying out the promise of the expression, “in the manner following,” and giving identity to the conspiracy. This descriptive matter is found at pages 6-8 of the indictment, and it may be said of it, as was said of another indictment (*In re Benson*, 131 Fed. 969)—“obscure, involved, tautological and verbose; a single sentence runs stumbling over several printed pages without a period.” But with a little patience, the actual facts may be extracted.

We are told, that the defendants, under the name of the Western Fuel Company, conspired to defraud

the United States out of duties on import coal "by making and causing to be made *false weights and false and fraudulent returns of weights* of such cargoes and importations of coal." This goes to the coal received by the company in the first instance—to the fraudulent weighing of the coal at the docks, as it was unloaded from the ships.

Then follows the second process, namely, the delivery of coal from the barges to the "draw-back" steamships and the transports. "And *by further fraudulently weighing and causing to be weighed,*" the indictment goes on, "by themselves and by the Pacific Mail Steamship Company, and reported to the United States, the *weights* of all such importations of coal loaded from the bunkers and barges of said Western Fuel Company," on board the "draw-back" steamships, "and further to defraud the United States by making and causing to be made *false returns, weights and entries* of coal shipped and loaded aboard" the government transports.

"And to that end," the indictment continues, "and for the purpose of carrying out such conspiracy, combination and agreement, to maintain on the docks, wharves and barges" of the company, "scales and weights which were to be and were *fraudulently manipulated* by the defendants to the end that said scales should record the *weights* of said coal *desired* by the defendants, and *not the true weights* of the coal *placed thereon*, and the said defendants did so *manipulate said scales and weights*, and the method of *weighing thereon*, so that

said scales and weights did record the *weights* of coal *desired* by said defendants, and *not the true weight* of the coal so *placed thereon*."

The fraudulent manipulation of the scales and weights, "so that said scales and weights did record the weights of coal desired by said defendants, and not the true weight of the coal so placed thereon," was supplemented, according to the indictment, by the fraudulent affidavits and statements of the defendants to the officers of the government and to the Pacific Mail Company, to the end "that said Pacific Mail Steamship Company should claim from the United States a greater 'draw-back' of coal duties, permitted where coal is loaded upon American registered vessels engaged in foreign trade, than *the true weight* of said coal would permit said Pacific Mail Steamship Company to claim, or was due the said Pacific Mail Steamship Company." The gravamen, then, of the indictment is, that the defendants conspired to manipulate fraudulently the scales, as well in the weighing of the coal upon the docks at the time of its importation, as in the weighing of the coal upon the barges, at the time of its delivery to the "draw-back" steamships, and thereby to defraud the United States of the duties which were payable on the true weight of the coal "so placed thereon," and of the amounts of draw-back attributable to the manipulated weights, registered by the barge scales, of the coal "so placed thereon". We find this summed up and addressed comprehensively to all the weighed coal, in the last para-

graph of the charging part of the indictment: "And further to cause *all coal weighed in, on or about the scales upon which the coal handled by said Western Fuel Company was weighed*, to be incorrectly measured and weighed, to the end, and for the purpose, that the defendants, acting under the name and guise of said Western Fuel Company aforesaid, should receive the profit and gain to be made *by such incorrect and fraudulent weight.*"

The pleader who drew this indictment seems to have assimilated, in his own mind, the case here to the case of *Heike against United States*, 192 Fed. 83, 91. The conspiracy alleged in the *Heike* case was to defraud the United States of import duties on sugar at the Port of New York. As in the case of coal at San Francisco, so with the imported sugar at New York, the invoice or bill of lading expressed the weights of the cargo as determined in the place of export. The duties were provisionally computed on the invoice weights, and the amount paid to the government. The goods were then weighed at the place of import by government weighers, and the duties were calculated upon their return of weights. If the importer, in paying on the invoice weights, had gone beyond the amount calculated on the return made by the government weighers, he was refunded the excess by the government. If the government weights, or "out-turn" weights, as they are called, exceeded the invoice weights, the importer made good the difference to the custom house. In the sugar case, the government was defrauded by a sys-

tematic tampering with the scales, which were made to register a weight less than the true weights; upon this lesser weight, the duties were finally liquidated, and the government paid over to the sugar company the difference between the amount of these final duties and the amount which had been figured on the invoice weights. The conspiracy turned on the tampering with the scales—that was the thing which gave it character and identity. The Circuit Court of Appeals said:

“Upon arrival of sugars, money was deposited with the collector sufficient to cover duties at the invoice weights. The sugars were then weighed by government weighers, and duties finally liquidated upon their return of weights. Certain of the conspirators were present at these weighings, *tampered with the scales*, and thereby made the apparent reading of weights registered on the dial or scale less than the true weights, in consequence of which the government weighers’ written statement as to the weights was a fraudulently made false statement. Being accepted by the collector as true, return of excess duties over amounts deposited was made to the company which imported the sugar.”

Here we have the fraudulent manipulation of the scales, the false return and entry, and the fraudulent withholding of duties from the government.

Again, it was said by the court (192 Fed. p. 100):

“It was overwhelmingly proved—we do not understand that it is disputed here—that for a long period of time the government was *defrauded* of duties by a *systematic under-weighing* brought about by the concurrent acts of em-

ployes of the sugar company *tampering with the scales.*”

When the case went to the Supreme Court of the United States (*Heike against United States*, 227 U. S. 131, 143) the court said:

“The frauds on the revenue were accomplished by a secret introduction of springs into some of the scales in such a way as to diminish the apparent weight of some sugar imported from abroad.”

In the *Heike* case, unlike the case at bar, there were two weighings of the same sugar, with a discrepancy uniformly against the government, except during certain periods

“when some controversy was pending which might involve investigations; and after the president of the company had written a cautionary letter, this discrepancy ceased, and when the rebate controversy was over, the old condition returned” (192 Fed. p. 97).

These two weighings are explained by the court (192 Fed. pp. 95-6):

“Besides the weighing of the sugar by the government officers for duty purposes, there was in the case of what are called ‘landed cargoes,’ a further weighing at the same time and place, on the docks, of the same sugar by certain city weighers in conjunction with sugar company checkers. The city weighers represented the persons who had sold the sugar to the company, and the weights ascertained and recorded on this second weighing were those on the basis of which the company paid for the sugar it had bought. The purpose of introducing this second record of weights was to

show discrepancies between the two weighings, uniformly against the government, except during certain periods. Such discrepancy was corroborative of other direct evidence going to show that, *by tampering with the scales*, government weighers had been tricked into returning short weights."

And finally (192 Fed. p. 101),

"the government showed that there came before these defendants monthly statements, which contained disclosures as to intake and output of the refinery, which, it was contended, indicated that the government weights were *uniformly abnormally short*, except during the brief period when disputes as to rebates produced a temporary cessation of *the tampering with the scales*. As to Heike, it was shown that he took action *to effect a change in the methods of bookkeeping* by making *additions to the intake figures after they reached headquarters*, which, it was contended, was *consistent only with knowledge* that the government weights were being *abnormally reduced*, and *with intent to cover up the transaction*. Statements made and action taken by Gebracht were testified to, which, it was contended, were consistent *only with guilty knowledge and participation*. Letters written *by both defendants* were put in evidence."

The court concluded that

"there was sufficient in the record to warrant a finding of knowledge and participation on the part of each."

**NO SUBSTANTIAL EVIDENCE, NO EVIDENCE AT ALL, OF THE
CONSPIRACY CHARGED IN THIS INDICTMENT.**

We are brought face to face, then, with the question in this case: Under this indictment was there

“substantial evidence of facts which exclude every other hypothesis but that of guilt,” (*Union Pacific Coal Company against United States*, 173 Fed. 737, 740) to the point and accusation that these defendants conspired to defraud the United States of import duties, whether in the weighing of imported coal on the docks, or of “draw-back” coal on the barges, by a fraudulent manipulation of the scales and weights, “so that,” in the words of the indictment, “*said scales and weights* did record the weights of coal desired by said defendants, and not the true weight of the coal *so placed thereon?*” And if, as said in the *Union Pacific Coal* case, *supra*, “all the substantial evidence is as consistent with innocence as with guilt, it is the duty of the appellate court to reverse a judgment of conviction”.

A fact that stands out in the case, something to be understood at the threshold, is the matter of an overage, or, as it is sometimes called, an overrun. Coal is a more or less porous substance, it absorbs moisture, and takes on weight accordingly. A pile of coal, of a given weight as it comes from the ship, when exposed to the atmosphere, whether in an open bunker or yard, or on an open barge, if played upon by water, whether from the atmosphere in the form of rain, or from a hose, gains in weight, acquires weight “over” and in excess of the first weight, overruns it; there is, in point of weight, as related to the first weighing, an overage or overrun, as the coal men call it. This is inherent in the nature of the coal, it is inherent in the coal business, in the

methods and places of storage and distribution, every coal man knows it, every coal man has had experience of it.

TOTAL OVERRUN, BUNKERS, BARGES AND YARD, ONLY 2.8%.

The average stock in trade of the Western Fuel Company, coal on hand, kept in storage, was about 32,085 tons, of which 2000 tons in San Francisco, 3000 tons in Oakland, were under cover, leaving, first and last, some 27,000 tons uncovered, exposed to atmospheric moisture, to rainwater, and to water from other sources (p. 1619). Coal, to illustrate, arriving here during the dry season, and piled in the open awaiting consumption through the winter months, would be exposed to climatic moisture and rain before going out of storage (pp. 1068-69). Piled coal tends to become heated, with danger, as well upon land as in the body of the ship, of firing up in spontaneous combustion, and it became necessary, on occasion, in the case of coal in storage, to flood it with water by means of pipes introduced into the mass (pp. 2158-9). A pile of coal once rained upon, flooded, or otherwise saturated with moisture, dries out only on the surface (pp. 1607, 2198). Coal, when hoisted from barges, dropped from the buckets and sent down a chute into the hold of the steamship, makes more or less dust, and it was a common thing for the crew of the steamship to wet it down; this was a common thing also in aid of the coal trimmers, the men who leveled it off in the ship's hold, and who had to breathe that they might do

the work (p. 2110). A fire hose would be played on the coal in the barges three or four times a day, from 20 to 30 minutes at a time, and again, for three or four hours at a time (pp. 881, 1331).

One witness speaks of the water dripping from the tubs as they came out of the hold of the barge (p. 1520). One of the steamship engineers complained that as much as a hundred tons of water went into his ship with the coal (p. 444).

This increase in weight, this "overage," of coal stored in the open, was testified to by scientific witnesses of eminent qualification and experience in the subject matter, like Professor Parr, Professor Somermeier, President Branner of Stanford University, and Professor Folsom of the same University. Parr has been Professor of Applied Chemistry for some 23 years in the University of Illinois, he made a special study of coal, and issued twelve publications on the subject, and he has been engaged in the public service of Illinois, in supervision of the coal purchased by the state. He has invented a number of devices for use by engineers in trying out the character and properties of coal, he has acted as umpire on a number of occasions in the settlement of disputes between operators and the users of coal, and he has been in charge of the examination of hundreds of coal mines (p. 1570).

Somermeier is Professor of Metallurgy in the University of Ohio, and has been associated with Professor N. W. Lord in his work as Chemical Director of the Coal Laboratory of the United States

Geological Survey. He also did the coal work for the Ohio Geological Survey from 1900 to 1907, and published the results of that work, the publication appearing under his name and that of Professor Lord. Ohio coal is the most important mining industry of the state, reaching an annual production of over twenty million tons. Somermeier, from May, 1904, to September, 1905, was in direct charge of the United States Government Laboratory at St. Louis.

“I have,” he said, “in my study of coals been particularly concerned as a specialty with the determination of moisture, oxidation and heating value” (pp. 1774, 1775).

These two witnesses went to the mines of the Western Fuel Company at Nanaimo, and made observations and experiments on the ground.

The overage in the weight of coal, as affected by the atmosphere and moisture, is made very plain by the testimony of these scientific witnesses, and no attempt was made to contradict the testimony. Coal, such as we are concerned with here, as it comes from the mine, and owing to the geologic pressure to which it has been subjected in place, has a relatively low percentage of moisture, which is constant for a particular mine (pp. 1783, 1778, 1790, 1597). The Western Fuel Company handled British Columbia coal, Australian coal, and Japanese coal, in the proportions, respectively, of 70%, 25%, and 5% (p. 1619). These coals are all low moisture coals, with a moisture content, in the first instance,

of about 3% (pp. 1602, 1784). They will gain in weight, on exposure, from one to eight per cent (pp. 1786, 1606). Indeed, as President Branner says, "the general rule is a matter of common information" (p. 1814). This overage is greater in fine coal than in lump coal. "Lump coal, without any fines in it, would perhaps have its upper limit of moisture content at two or three per cent; the finer the coal, the more moisture it would hold up to eight or ten per cent, in the general type of coal that is handled here" (p. 1607, p. 1881). Japanese coals have a large proportion of screenings, and the percentage there would run as high as twelve or fifteen per cent (p. 1607, (p. 1750, p. 1787, p. 1617). Australian coal has 24% of screenings or fine coal (p. 1787). British Columbia coal has 35% of screenings (pp. 1945, 1942).

Indeed, it was laboring the point to examine scientific witnesses at all, as to the overage. As President Branner remarked, in language already quoted, the general rule is matter of common information. Perhaps Dr. Branner might have qualified this statement by saying that the general rule was a matter of common information to people in the coal business, to those who knew anything about it. Take a man, like Henry Rosenfeld, one of the best known coal men in San Francisco, of long experience and familiarity in the handling of the coal in question (pp. 1941-2, 1943). His firm, the well known house of John Rosenfeld Sons (p. 1944) had been succeeded by the Western Fuel

Company (p. 1943). The defendants Mills and Mayer had been in his employ, respectively as superintendent and weigher, and in those same capacities they went over to the Western Fuel Company.

“Most coals,” says Mr. Rosenfeld, “would overrun, but some of them did not. For instance, Eastern anthracite is always short, and some kinds of English and Scotch coals would sometimes be short. *The Nanaimo, Japanese, and Australian coals would always turn out over. I would estimate this overage as between two and three per cent.*”

And again:

“I attribute *the usual increase* in the weight of a pile of coal thus left in the yards, to rain fall and the humidity of the atmosphere, and to fog. The amount of the increase varies entirely according to the brand of coal, its percentage of screenings, length of exposure, etc. Some coals turn out short, *but not Nanaimo.*”

To a suggestion that coal moved more or less frequently in the operations of the business, would be less subject to humidity, Mr. Rosenfeld, on cross-examination, gave this instructive testimony:

“We always attempted to handle first the coal that was *in the bunkers*, the coal in the yard *being piled there for the winter when the demand was more*. We left the coal in the yard *by force of circumstances* because there was not so much sale in the summer. The coal that was handled all the time, sold to the ships, and to the trade, *came from the bunkers, largely*. It was kept moving all the time. *It is not a fact* that by reason of that constant movement we had *a shortage* in that coal, ex-

cept in an exceptional situation and with some Eastern and English brands. The coal that is thus in constant movement from ships to bunkers, and from bunkers to barges, etc., does not suffer very much by reason of humidity, and it is not as likely to increase in weight as the coal in storage in the yards up into the winter. I think, however, that even the coal that is thus handled continuously *is likely to undergo some increase in weight*, but I could not say what the percentage of that increase would be. I should judge *somewhere between 1 and 2 per cent*. Except that the coal *did overrun*, I have no recollection about the matter. I would say that the increase was sometimes *over 1½ per cent*, but I could not tell you how many times that occurred. We have had an increase of *2 per cent and more* even in the case of coals *that never entered the yard*. *That would not be an extraordinary percentage of overage if the coal had laid in the bunker for any length of time*. In the summer probably the coal would not turn out more than 2 per cent over" (pp. 1952-3).

H. C. Richards, a coal man of long experience in San Francisco, and familiar "with all kinds of coal coming in here" (p. 1955), including the coals in question here, testified that, "in the great bulk of cases, there was an overage" in coal stored "under usual conditions, that is, put in a yard, subjected to water falling on it, and then taken away in the ordinary course of business" (p. 1956); very little of the weight would be lost by evaporation during dry weather, and climatic conditions in San Francisco, like fog, would have to be reckoned with (p. 1959).

Robert Husband has been in the coal business in San Francisco for thirty years, including in his experience the British Columbia, Australian, and Japanese coal, carrying coal in stock for sale in quantities varying from ten thousand to thirty thousand tons, this coal being kept in stock, on an average, for six months before being disposed of.

“Our experience was, that we would have *two or three per cent* more coal on hand when stock was taken, than our books showed us to have received, basing the amount received on the custom-house weights” (pp. 1962-3).

He adds:

“We always figured a profit *on our overrun* of fifteen cents a ton, and I always used that in making my calculations, *in bidding for contracts*, and so on” (p. 1963).

Mr. Husband further says that

“during the winter months, the increase would be larger than the percentage I have given—I have known it to run as high as a five per cent. increase in the winter season, the amount of the increase depending both on the character of the coal and the character of the weather” (p. 1965).

And again:

“The only causes I know of for the increase in the weight of these piles of coal stored in the yard, would be the accession of rain and the fog, and the absorption of moisture. If the pile of coal were put in the yard in summer months, and remained about two or three months before the rain commenced, the increase

in weight would not be so great, of course, as it would be in the winter when the rains were falling. It was the practice among wholesalers or importers in my time, to store up coal exposed to the elements. They were drawing from their own mines" (pp. 1965-6).

James J. McNamara, in the coal business here for over 31 years, and, since 1895, manager of the Central Coal Company, which is virtually owned by the Western Fuel Company, was, of course, familiar with the coals imported by the Western Fuel Company.

"I have carried coal," he says, "in stock here in San Francisco, it would be exposed to the weather in quantities of several thousand tons at a time. We have generally experienced an overrun in that connection amounting to three or four per cent over the custom-house weight" (pp. 1968-9).

This witness indicates, in explanation of the increase in weight, something elsewhere testified to in respect to the Western Fuel Company, and nowhere questioned (p. 2157), namely, that his company weighed out the coal to customers on an even beam, selling it according to circumstances by the short ton or long ton measurement (p. 1969), whereas the custom-house weights were not accurate; and it is beyond question in this case that the custom-house weights were on a rising beam (pp. 251, 290, 300). The witness, before becoming manager of the Central Coal Company had been

"with the firm of J. McDonough & Co., and that was also where I had my experience in

connection with the overruns of coal in stock. I was with them for four years" (p. 1973).

R. P. Jansen had been for thirty years weigher for the Pacific Coast Coal Company. It was the practice of that company, when coal was wet, to make an allowance to purchasers on account of moisture (p. 1974). Mr. Jansen says:

"To my knowledge, there were overruns in the stocks of coal yarded by the Pacific Coast Coal Company. The percentage of that overrun on the custom-house weights would be from two to three per cent. That overrun occurred in spite of any allowance which we were accustomed to give to purchasers for coal that was wet. The range of the allowance would be about four to five per cent."

And on cross-examination he says:

"The coal of the Pacific Coast Coal Company was stored at the foot of Beale street. A record was kept of the amount of coal that went into a pile, and of the amount that was taken from the pile at clean-up. Assuming that in dry weather a pile was created and removed without any intervening rain-fall, I would not think that that pile would decrease in weight. I should think, from my judgment and experience, that it would increase; in sixty or ninety days I should think that such a pile might increase about 2%, or about half as much as it would increase during a rain-fall. I think that is to be accounted for in dry weather by fogs and moisture. I would cite coal coming in by rail from Utah as an instance where a pile increased 2% in dry weather in thirty days. Sometimes coal increasing 2% in dry weather, would remain in the yard stored three or four months" (pp. 1974-5).

Mr. James B. Smith, vice president of the Western Fuel Company, and in the coal business 32 years, testified:

“As long as I have had any knowledge of that business, overruns have been found to occur in its conduct. The time when one has opportunity to find out about overruns is naturally at the taking of stock for the ascertainment of conditions as to the delivery and receipt of coal, and as to the coal on hand. In taking stock for any period, the elements and factors to be considered would be the amount of coal on hand at the beginning of the period, the quantity of coal as shown by the receipts during that period, the quantity of coal shown by the deliveries during the same period, and the quantity of coal actually on hand at the conclusion thereof. *These times of taking stock are the only times when I would have occasion to note such overruns as there might be.* We adjust our stocks at least once a year. It sometimes occurs that we do so more often, but I would regard one adjustment per year as essential. According to our adjustments, the overrun or excess would be from $2\frac{1}{2}$ to 3%. To the best of my recollection, that has been our normal overrun in the Western Fuel Company since its incorporation. In answer to the question whether that overrun was regarded by me as in the nature of a surprise, I would say that considering the character of the commodity and the conditions under which we receive and sell coal I considered the fact that we had such a small percentage of overrun a normal result in the general transaction and character of our business. If my memory serves me right, the percentage of overrun that the Western Fuel Company had was not any larger than that which I experienced in the previous coal concerns with which I was connected” (pp. 2156-7).

Mr. Smith then explains the weighing of imported coal, under the Treasury Regulations with a rising beam:

“Under such a system there must be an increase in weight given to the recipient of the coal. When the Western Fuel Company sells and delivers coal to its customers it endeavors to give them the weight which they pay for, but we weigh the coal out on an even, rather than a rising beam” (p. 2157).

He estimates the difference in weight, as between the custom-house method of the rising beam and the company's method of the even beam, as ranging from one-half to three-quarters of one per cent (p. 2158). His experience as to absorption and retention by coal of moisture, covers some 26 or 27 years (p. 2158). On occasions where piled coal was heating, it has been necessary to saturate it thoroughly with water—Mr. Smith has known of coal piles to catch fire “before we could get the water on them” (p. 2159). He has seen the coal piles actually break into flame once or twice during his connections with the Western Fuel Company, and several times during his earlier experience in the coal business (p. 2159).

“As a general thing, though, we have flooded the pile before that would occur. The method of flooding is to put a hose through the different parts of the pile until it would be so thoroughly saturated that the water would drain out from the bottom” (p. 2159).

He speaks of natural causes accounting for the overage mentioned by him of from $2\frac{1}{2}\%$ to 3% :

“I have in mind the absorption of the commodity, and the atmospheric conditions to which coal is subjected here, both in the rainy and in the dry seasons” (p. 2158).

He says, further:

“I have said heretofore that we ascertained our overrun at the time of taking stock. The barge business is not segregated from the rest of the business in respect to this determination of overrun. No computation was ever made on the barge overrun, or the percentage of barge overrun, prior to the investigation conducted by Price, Waterhouse & Company, accountants, and submitted here in this trial, showing an average barge overrun of 4.8%. I would account for this barge overage of 4.8%, covering the period of 1904 to 1912, by the method of weighing, by the fact that some of the coal goes into the barges without being weighed, and by the moisture content of the coal. There is no question but that that coal will be increased in weight whether summer or winter if water be added to it. I mentioned the methods of weighing: I refer to the weighing out of coal from incoming vessels as well as the weighing out of coal from barges into the liners, this weighing being on the average system. By absorption of moisture, I refer both to the placing of water on the coal by artificial means and naturally from the atmosphere. The average system of weighing cannot be an exact or accurate system” (pp. 2159-2160).

It would be extraordinary, then, it would be incredible, if, during the years that the Western Fuel Company kept coal in open storage at San Francisco, there had not been an overrun or overage, in excess of the custom-house weights. There

was such an overrun; what happened to the other coal men in San Francisco, happened to the Western Fuel Company—there was an overrun, just such an overrun as these coal men speak of, and an overrun of less than 3%. The books of the Western Fuel Company, put in evidence by the government itself, for the period between April 1st, 1906, and December 31st, 1912, about seven years, showed the following:

The company sold during this period,	2,196,215 tons
Destroyed by fire in 1908,	326 “
On hand at end of this period,	4,286 “
	<hr/>
	2,200,827 tons
Company imported during this period, going now by the custom-house weights,	2,138,831 “
	<hr/>
Excess, “overage”, or “overrun”,	61,996 tons
(Government Exhibit No. 125, Table B, p. 2732; and Table A of same Exhibit, p. 2728.)	

That is to say, with an importation, according to the custom-house weights, of 2,138,831 tons during a period of seven years, we have an overrun of 61,966 tons, or only 2.8 per cent.

“And that overrun”, W. H. Tidwell, special agent of the government, was asked, “on the whole of the business done by the company, including sales in every direction, those as to which deliveries were made to the sides of vessels through the barges, those as to which deliveries were made by being loaded upon coal wagons in this city, and those as to which

deliveries were made by the railroad trains, is 2.8 per cent only in excess of the out-turn custom-house weights upon the importation of the coal; is not that the fact?"

To which Tidewell answers:

"That is approximately correct" (pp. 668-9).

So much, then, for the total overrun of coal in storage, as compared with the custom-house weights, whether stored in bunkers or barges or yards. The overrun, as such, inhered in the business—in the nature of the commodity handled, in the method of weighing the coal, under government regulation, on a rising beam, (pp. 251, 290, 300, 1490, 1491, 1627, 1992-3, 2157-8), for the ascertainment of the dutiable weights, as compared with the weighing of that coal by the company, on a level beam, for distribution into the trade (pp. 2157, 1969); in the exposure of the coal to atmospheric conditions of moisture, to rain and fog, in the subjection of the coal to the action of water through pipes in the yard, or to the playing of the ship's hose on the barge; in the observation, experiment, and judgment of informed and scientific men; in the every day experience of San Francisco coal men, of every witness who had direct touch and knowledge of the business. It was the normal, usual, familiar overrun, if anything slightly less, of coal in stock, as the coal business was ordinarily and regularly conducted in San Francisco. It was not a condition of government weights "abnormally short", of government weights "abnormally reduced", as in the

Heike case (192 Fed. 101). It was normal, it was not abnormal.

**DIFFERENCE OF APPROXIMATELY 1% BETWEEN INVOICE
WEIGHTS AND CUSTOM-HOUSE WEIGHTS.**

But during this same period, April 1, 1906, to December 31, 1912, for which we have been looking at the total overrun of all coal in stock in excess of the custom-house weights, there was a difference between the invoice weights of the imported coal and its ascertained weight,—ascertained by the custom-house weighers. This difference was less than 1% of the invoice weight, as appears from the exhibit prepared and introduced by the government itself, namely, U. S. Exhibit 125, Table A, p. 2728 of the transcript. The ascertained weight, it appears from this table, and as we have already seen, was 2,138,831 tons. The invoice weights, for the same period, are 2,159,551 tons. The difference is only 20,720 tons. The ascertained weights coincide with the invoice weights to the extent of 99% and more.

This approximate difference of but one per cent between the invoice weights and the custom-house weights, is susceptible of a slight shading, under and over. It is slightly less than 1% as appears from the figures just quoted from Table A of U. S. Exhibit 125. It is slightly over 1%—by 7/100 of 1%, on the figures of Table D in this same exhibit, page 2814 of the transcript.

A word of explanation here. Not all cargoes of imported coal, in the case of the Western Fuel

Company, were full cargoes. A ship might come into this port with three thousand tons of coal, consigned to the Pacific Coast Coal Company, for example; the Western Fuel Company might have need of a thousand tons of that coal, it would negotiate for it, buy it from the Pacific Coast Coal Company, and that ship, to the extent of the thousand tons, would be discharged at the Western Fuel Company's dock, and the custom-house weight of the thousand tons of coal would be there ascertained, just exactly as a full cargo would be ascertained—by the government weigher. The other 2000 tons would be taken by the ship over to the dock of the Pacific Coast Coal Company, for a second unloading, or, indeed, the first unloading might have been at that company's dock, and the second unloading at the dock of the Western Fuel Company. The 2000 tons would go through the same process for ascertainment of custom-house weight at the one dock as at the other. The custom-house would have its record of the two weighings, it would add them together, and it would compute on the total sum the amount of liquidated duties. The invoice or bill of lading showing the weight of this coal at the point of origin or export, would accompany the cargo, and would express the invoice weight of the cargo as an entirety. Indeed, the break-up of that cargo into partial distributions at San Francisco might not have been contemplated until the ship arrived here and lay in the stream. There would, therefore, be no fractional invoices—no in-

voice weight of the thousand tons taken by the Western Fuel Company, no invoice weight of the 2000 tons taken by the Pacific Coast Coal Company. Consequently, while the custom-house would have the ascertained weight of the Western Fuel Company's partial cargo, of the thousand tons, that is to say; nevertheless there would be no invoice weight of that particular thousand tons to compare with the custom-house weight of the same; and for the plain reason that no such invoice weight was to be had. This situation led to the preparation by Mr. Tidwell of Table D, attached to this same Exhibit 125, and found at page 2814. In Table D, Tidwell assumed that the partial cargoes taken over by the Western Fuel Company, upon which the custom-house weight had been ascertained, but for which there was no invoice weight, should have attributed to them an invoice weight, a supposititious one, precisely identical with the custom-house weight. These partial cargoes, as made to appear by Exhibit D, amounted to 232,990 tons. He subtracts this amount from the invoice weight, 2,159,551 tons of Table A, leaving a net invoice weight of imports of 1,926,561 tons.

If, now, the net shortage, 20,720 tons, be computed in terms of percentage on the basis of this net invoice weight, after the deduction has been made for partial cargoes, a slight change or shading of the percentage must be made—instead of being a trifle under one per cent, it is a trifle over—by seven one-hundredths of one per cent; and

this is the maximum, the extreme percentage, at which the government has been able to arrive. No doubt, if the invoice weight of a partial cargo could have been had, and could have been contrasted with the custom-house weight, the normal and usual shortage, in the neighborhood of one per cent, would have come out; but Tidwell's difficulty, as he testified, was, that while he had the invoice weight of the full cargo, and the custom-house weights of the partial cargoes, whether at the Western Fuel Company's dock for a thousand tons, or at the Pacific Coast Coal Company's dock for 2000 tons, yet he was not able to tell where the normal shortage on the total cargo lay—how much of it was attributable to the coal taken by the Western Fuel Company, how much attributable to coal taken by the Pacific Coast Coal Company. The result was, that in case of partial cargoes, he made no assignment, anywhere, of the usual and normal shortage. But the point is not to be missed—it stands out in the examination of Tidwell by the government counsel, that a shortage between invoice weights and custom-house weights is a datum, a known quantity, a normal and usual thing to be expected and reckoned with by anybody in the business. In explaining why he assumed the custom-house weight of a partial cargo to be the invoice weight, and so made up his Table D, both Tidwell and his counsel show full recognition of this normal

and usual shortage. Tidwell is asked the following question, and he answers it as quoted below:

“Q. And, of course, that had to be done by you because, in a case where there was a shortage, and two or more persons purchased parts of the cargo, it would be impossible for you to tell *where the shortage occurred*, and the exact amount of shortage that *ought to be charged up* against the Western Fuel Company, or that *ought to be charged up* against the other vendees; is not that correct?

“A. That is true” (p. 288).

Any assumption that these invoice weights were accurate and exact is purely gratuitous. Japanese coal, in respect to bunker coal, seems to have been averaged on the weight of every “tenth bag ashore” (p. 1861); and in respect to cargo coal, by estimate of the capacity of the lighters (p. 1860). As to the Australian coal imported by the company, the testimony does not inform us of the methods pursued, at the place of original shipment, for the weighing of the coal. If the same practice obtains in Australia as in British Columbia, then Australian coal, 25% in quantity of the company’s importation, was invoiced at the weight registered by a falling beam, in contradistinction from the rising beam of the San Francisco custom-house. British Columbia coal, as noted above, constituted 70% of the company’s importation. For the seven years between April 1, 1906, and July 12, 1913, the difference between the invoice weight and the ascertained or custom-house weight of this coal was relatively insubstantial and negligible—a percentage of .0112 of

the invoice weight. To give the figures, all British Columbia coal imported by the company during these seven years was invoiced at the weight of 1,295,199 tons; its custom-house weight was ascertained at 1,280,676 tons; or a difference in 1,295,199 tons, of 14,523 tons; or, again, as expressed in terms of percentage, .0112 of the invoice weight (p. 2072).

But the invoice weight of this British Columbia coal was demonstrably inexact. It was inexact for purposes of relation to the custom-house weight, for the plain reason that it was weighed, when weighed at all, in British Columbia, on a falling beam (pp. 1513, 1490, 1491) at San Francisco, the custom-house, acting under a government regulation to that effect, weighed it on a rising beam. In large part, however, it was not weighed at British Columbia at all, it was estimated there, and it was invoiced accordingly. The explanation may be made here that coal shipped by the Western Fuel Company from its own mines at Nanaimo to itself at San Francisco, was, in the administration of the business, invoiced to the company precisely as if the company at San Francisco had been some third person (p. 1477). Now, then, the company had two mines in British Columbia, one at Nanaimo, the other at Northfield. The Nanaimo coal was weighed before shipment; there were scales at Nanaimo, and upon these scales it was that the coal was weighed, and on a falling beam (pp. 1513, 1490, 1491). There were no scales at Northfield, the Northfield coal was not weighed at all, its weight was merely esti-

mated. Between the rising and the falling beam, a difference would result of 1.03 per cent, and as much as 1.16 per cent (pp. 1490, 1491, 1627). When the weight was merely estimated, it was by reference to the draught of the vessel, a process necessarily inexact and approximate only (pp. 1492-4). During the seven years in question there were 166 cargoes from British Columbia. Of these, but 16, speaking strictly, were from Nanaimo. The remaining 150 were mixed cargoes, partly from Nanaimo, where the weight was calculated on the falling beam, and partly from Northfield, where the coal was not weighed at all (pp. 1479-1485, 1486).

Indeed, regard being had to the approximated weights of coal loaded at the Northfield mine, Mr. Stockett, manager of the Nanaimo mines tells of the practice, begun in March, 1906, of making the bill of lading weight on large cargoes 100 tons, and on small cargoes 50 tons, less than the estimated weight. This difference was discontinued in November, 1907. And in September, 1908, the practice was introduced of making a deduction from the estimated or approximated weights of three per cent, to fix the bill of lading weights. This continued until June, 1909, when the deduction was cut down to one per cent (pp. 1474-5). The discontinuance of the hundred ton reduction on large cargoes and the fifty-ton reduction on small cargoes, was under instructions from the San Francisco office (letter from Mr. Norcross, secretary, of November 12, 1907). The reduction of the percentage basis

from 3% to 1%, was likewise under instructions from the San Francisco office, contained in Mr. Norcross's letter of July 9, 1909, directing a reduction from 3% to 1% "as there does not seem to be any necessity for such a heavy allowance"; and Mr. Norcross adds, in explanation:

"On the last six cargoes received, the actual weight was 36,347 tons, turned-out 35,882 tons, a shortage slightly over one per cent" (pp. 1477-8).

The term "actual weight" used by Mr. Norcross, refers, really, to the estimated weight; in large part estimated, as we have shown, because of conditions obtaining at the Northfield mine. It is proper to say that in some cases,—in 1906, two cargoes loaded exclusively at Nanaimo, where there were scales—a deduction appears to have been made for the invoice weight, due, probably, as explained by Mr. Stockett, to the circumstance that the office-men may have overlooked the fact that the vessel was loaded exclusively at the No. 1 mine (p. 1488). In point of fact, Mr. Stockett knew nothing of this until he was making up his statement for the case on trial, in the summer of 1913 (p. 1488).

It may be added here, what has been adverted to more than once, that the government duties on this Nanaimo coal, as on all imported coal, were computed and liquidated on the custom house weights at San Francisco; and it was upon these custom house weights that the San Francisco office, as in the case of any importer from whom the Western Fuel Com-

pany bought imported coal, made its accounting and settlement.

But this is not all. The Western Fuel Company, it is true, imported coal into San Francisco, not simply from its own mines in British Columbia, but from Australia and Japan as well. It was not the only Richmond in the field, however. There were other coal importers in San Francisco. It is of interest, at this point, to compare the net shortage, as between invoice and custom house weights, in the importations by the Western Fuel Company of this foreign coal, on the one hand, and, on the other hand, in the importations of these different coal importers doing business, like the Western Fuel Company, in San Francisco. It is all brought out in the transcript (pp. 2032-2047). We give the result, it speaks for itself:

Net Shortage on Australian coal discharged by the Western Fuel Company, April 1, 1906—July 31, 1913,	57/100 per cent;
Net Shortage on Australian coal, same period, discharged by Pacific Coast Company and Jas. P. Taylor,	70/100 “ “
Net Shortage on Australian coal, same period, discharged by J. J. Moore & Co.,	1 12/100 “ “

Net Shortage on Australian coal, same period, discharged by Pacific Fuel Co.,	59/100 per cent;
Net Shortage on Australian coal, March to September, 1907, discharged by Southern Pacific Co.,	8/100 “ “
Net Shortage on Australian coal, November, 1907—April, 1910, discharged by Hind, Rolph & Company,	34/100 “ “
Net Shortage on Japanese coal, February, 1907—May, 1913, discharged by Western Fuel Company,	263/100 “ “
Net Shortage on Japanese coal, March, 1907—January, 1910, discharged by Southern Pacific Company,	262/100 “ “

Henry Rosenfeld, who has been mentioned above, testified:

“As to the importing of coal, our experience with reference to Japanese and Australian coal was, that the custom-house weight at this port was less than the bill of lading or invoice weights. That is to say, there would be shortages. We were, at that time, importing coal from our own mines in British Columbia. I could not give an accurate estimate as to the amount of the shortage, because it varied greatly. Sometimes it would

be 1%, sometimes as much, I should think, as 4% short" (p. 1944). And again, speaking of the British Columbia coal: "The consular invoices or bills of lading were sent to our office in San Francisco. The cargo of coal was weighed in San Francisco by the custom-house weigher. As far as I recollect, the latter's records always, or rather usually, showed a shortage averaging from two to four per cent" (p. 1946).

Similarly, Mr. Husband says that

"usually the custom-house weight was short of the bill of lading weight on Nanaimo and Australian coal" (p. 1963).

The inexactness in the process of weighing coal, whether at the point of origin or at the point of discharge, is illustrated by the government Exhibit No. 125, in the summary of Table A, at page 2728 of the transcript. It appears therefrom that while the custom-house weights, during the period, 1906-1912, in the net result went short of the invoice weights, to the extent, as we have already noted, of 20,720 tons, nevertheless during this period, and for each year of it, there were overages in the custom house weight, as compared with the invoice weights, just as there were shortages in the custom-house weights as compared with the invoice weights. These overages—these instances in which the custom house weights went over, not under, the invoice weights, are tabulated in terms of tons, year by year, in this summary of Table A, and they amount, in the aggregate, to 5324 tons. On the other hand, the shortages in the custom house

weights, as compared with the invoice weights, are also tabulated, and in the aggregate they come to 26,044 tons. The net shortage is, therefore, 20,720 tons, a net expression, less than 1% of the invoice weights. Coal is not handled on the delicate poise of a chemist's balance. It is a rough commodity, shipped and weighed in bulk. So considered, and without adverting to the falling beam in one place and the rising beam in another, or to the Japanese average, or to the Northfield estimate, it would be out of all reason to expect a perfect equation between the weights at the place of shipment, and the weights at the port of entry. Hence it is, that we find the customs officers of the government, fully apprised as they were of the invoice weights upon which they figured and collected the duties provisionally, accepting and acting upon the custom house weights, slightly lower by about 1% in the net result, and, year in and year out, refunding the excess duty accordingly to the Western Fuel Company. The company, throughout the years, paid the government for duties, calculated in the first instance on the invoice weights, \$1,120,553.97. The government, in full knowledge of the premises, accepted the custom house weights, lower in the net result, as the basis on which the duties were to be finally liquidated, and on that basis refunded to the company, through these same years, excess duties to the amount of \$10,788.58. This left a net amount of duty paid to the government of \$1,109,765.39. The entire refund was less than 1% of the total duties

actually and finally paid (p. 2061). Other importers of coal at San Francisco from whom the Western Fuel Company had occasion to buy imported coal, acted just as the custom house acted. They took payment from the Western Fuel Company for their bill, on the custom house weight of the coal, although that meant a less amount of money than if the bill had been made up on the invoice weight. Everybody concerned did the business that way—the government, the Western Fuel Company, the other coal importers. The Western Fuel Company itself had, on occasion, sold cargoes of British Columbia coal, imported by it from its own mines, to the Spreckels Commercial Company at San Diego (pp. 528-9, 530-1-2-3). These cargoes were entered by the Spreckels Company at the Port of San Diego; they were weighed by the customs officers at San Diego, in connection with the entry, the Western Fuel Company had nothing to do either with the entry or with the weighing of this coal at San Diego. In the case of each of the cargoes, the custom house weight at San Diego was less than the invoice weight. The average shortage was $1\frac{92}{100}$ per cent (pp. 540, 541), as compared with the percentage of .0112 representing, as we have already pointed out, the shortage between the custom house weights and the invoice weight of all British Columbia coal imported by the Western Fuel Company for its own stock at San Francisco, between April 1, 1906, and July 12, 1913. The Western Fuel Company, like the government, like these

other coal importers, accepted, as a matter of course, the lower custom house weights of San Diego, as against its own invoice weights, and received payment accordingly from the Spreckels Company (p. 532).

It is now submitted:

(1) The existence of an overage, or overrun, of the coal in stock, in excess of the custom house weights, by 2.8 per cent, so far from being a fact "which excludes every other hypothesis but that of guilt" (*Union Pacific Coal Co. against United States*, 173 Fed. p. 740), was a normal condition, inherent in the business, "as consistent with innocence as with guilt," (*Union Pacific Coal Company against United States, supra*), consistent, indeed, with no other interpretation but that of innocence.

(2) The existence of a difference, or net shortage, as between the invoice weights and the custom house weights, by less than 1%, so far from being a fact "which excludes every other hypothesis but that of guilt," was a normal condition, inherent in the business, "as consistent with innocence as with guilt," consistent, indeed, with no other interpretation but that of innocence.

It will not be said, then, that James B. Smith, or his co-defendants, were in a conspiracy to cheat the government out of import duties, or out of draw-backs, because there was an overrun in the coal stock, or a want of conformity between the invoice weights and the custom house weights; or be-

cause James B. Smith, or his co-defendants, knew, what every custom house officer knew, what every coal importer knew, that coal in stock did overrun, and that custom house weights did not coincide accurately with invoice weights.

EXPOSED ROD INCIDENT.

What substantial evidence, then, is there—what evidence at all—of the conspiracy alleged in this indictment; of the charge that James B. Smith and his two co-defendants conspired together to defraud the United States,

“and for the purpose of *carrying out such conspiracy*, combination and agreement, to maintain on the *docks, wharves and barges* owned, operated, controlled and occupied by said Western Fuel Company and by the said defendants at the port of San Francisco, in the State and Northern District of California, *scales and weights* which were to be and were *fraudulently manipulated by the defendants* to the end that *said scales should record the weights of said coal desired by the defendants, and not the true weights of the coal placed thereon*, and the *said defendants did so manipulate said scales and weights and the method of weighing thereon*, so that *said scales and weights did record the weights of coal desired by said defendants, and not the true weight of the coal so placed thereon*” (p. 7).

An act of fraud—the doing of something fraudulent by somebody—is not a conspiracy to defraud. Conspiracy requires the action of two or more; it imports an agreement between the parties, and then a criminal status supervening upon the agree-

ment; it is, indeed, the result of an agreement rather than the mere agreement itself, it is a criminal partnership. If one of these defendants actually tampered with the scales for the purpose of keeping the custom house weights down, that would be an act of personal fraud on his part, for which he would be answerable; it would not be a *conspiracy* to tamper with the scales. His co-defendants, who had not authorized the act, who had not taken part in it, who had not approved or ratified it, would not be responsible. They would not be conspirators with him. To draw them within the toils of a conspiracy to tamper with the scales, it would be necessary to produce some substantial evidence, either direct or circumstantial, not consistent with an innocent interpretation, of an agreement between him and them to do this wrong thing, and, as a result of that agreement, a criminal partnership for its accomplishment; but they must be shown to be his partners for the commission of the crime, and by substantial evidence consistent only with that guilty status. "A conspiracy is constituted," said the Supreme Court of the United States (*United States against Kissel*, 218 U. S. p. 608)

"by an agreement, it is true, but it is the result of the agreement, rather than the agreement itself, just as a partnership, although constituted by a contract, is not the contract but is a result of it. The contract is instantaneous, the partnership may endure as one and the same partnership for years. A conspiracy is a partnership in criminal purposes."

Is there any evidence that James B. Smith and F. C. Mills were in a criminal partnership, *inter sese*, or with anyone else, "to maintain scales and weights which were to be and were fraudulently manipulated by the defendants to the end *that said scales should record the weights of said coal desired by the defendants, and not the true weights of the coal placed thereon*"? None whatever. But there is evidence here, of a kind, on which the imputation is made, as to the defendant E. H. Mayer, that, some seven or eight years before the finding of this indictment, he was guilty of an irregularity in the operation of the scales at Mission Street dock, at a time when the custom house officer was weighing imported coal. Something, now, as to this evidence itself, and as to its legal quality and bearing in this appellate proceeding.

Coal was hoisted out of the ship and dropped into a receptacle or bin, called a hopper, and from the hopper, it passed down a chute into some coal cars standing on the dock, say, four coal cars, and these cars, moving by electric traction, were sent over the horizontal surface of the scales to be weighed. Rising up from the edge of the scales, like a building from the sidewalk line, was the scales house, and in that house was a room into which the beam ascended from the scales below, and from that beam, a rising beam as we have seen when weights were taken, the government weigher ascertained the weight of a given coal car, or of two cars at a time, and noted it, and a similar notation

was made by the checker or teller, in the employ of the Western Fuel Company, who stood by and followed and registered the weighing operations of the government officer. For instance, there was a government weigher named Arnold H. Freund; there was a company checker, one of these defendants, E. H. Mayer.

Now, then, the physical connection between this beam in the government weigher's office and the scales themselves, was made by a metallic rod which extended upwards from the scales through the scale house and into this office, there attaching itself to the weighing beam. The imputation is, that Mayer, sometime in 1905, while coal was being weighed, manipulated this connecting rod with his leg, as he sat at the table with the government officer, and in that way caused the beam to record a false weight for the scales on which the coal had been placed. It does not appear that either the government officer or the defendant Mayer took the incident, such as it was, very seriously; it does appear, and from the testimony of the government officer himself, that shortly after he had made a reference to the circumstance, this exposed rod was boxed in, and made safe against possible manipulation in the future.

It is only just to the defendant Mayer to say that he denies the existence of any irregularity in the premises. Indeed, he says that the scale rod was encased at the time of the alleged incident, and before he knew the witness, David Powers (p. 1995). It is to this witness, David Powers, and to the govern-

ment weigher, Arnold H. Freund, that the government looks for the evidence of this alleged wrongful interference with the scales.

David Powers is the "informer" in this case. He got his first work, after quitting school, from the defendant F. C. Mills, who, besides acting as superintendent for the firm of John Rosenfeld Sons, and afterwards for the Western Fuel Company, took contracts himself for the trimming of coal on steamers—for the adjustment and levelling of the coal in the bunkers, so that they might be filled to available capacity. From 1902 until 1904, David Powers was a time-keeper for Mr. Mills, on this work of trimming coal (p. 686). From 1904 to 1908, David Powers, while still keeping time for Mr. Mills, was employed, more or less intermittently, by the Western Fuel Company, upon the Pacific Mail dock, at the foot of Brennan Street (pp. 688-9). During this period, he had an occasional job as hatch-tender on the barges, but it was "very seldom", and acted, very seldom, also, as a checker on the imported coal (p. 739). Generally speaking, "during that four years," he "worked, at times, along the water front for the Pacific Mail Steamship Company," and he "was paid by the Western Fuel Company by the day" (p. 739). He was unable to say "how much time during that 1904 to 1908 period I was actually employed by the Western Fuel Company"; and "between the intervals of employment I would be doing nothing" (p. 739). "When not acting

as hatch-tender or weigher”—an infrequent thing, as we have seen—“I was probably in charge of the Pacific Mail Steamship Company’s tracks, *but I was only employed there occasionally, just as I was only employed occasionally by the Western Fuel Company as hatch-tender or weigher*” (p. 739).

In 1908, David Powers was sent to the Pacific Mail Steamship Company by Mr. Mills, as he testifies, to work for that company as a weigher. This employment lasted about sixty days (p. 697). It was not a continuous period, but from time to time, how many times, Powers was not able to remember (pp. 740-741). That was his first and last work for the Mail Company (p. 742). He says, “I quit them in disgust” (pp. 697-8), and leaves it to be inferred that the Mail Company was not receiving full deliveries of coal, that he reported the circumstance to the Mail Company’s superintendent, Mr. Chisholm, and was told so say nothing, and in consequent disgust he quit the service (p. 698). He explains, with more particularity on cross-examination, that he protested to Chisholm “on the very first occasion that he went to work for him” (p. 746), but did not then quit in disgust, but stayed on for awhile, and he cannot remember how long it was before he “quit in this disgust” (p. 747), nor is he able to remember whether he worked for the Mail Company, on and off, for an entire year before quitting in disgust (p. 747).

On leaving the Pacific Mail, David Powers goes back to the Western Fuel Company—his disgust

notwithstanding, he goes straight back—as a sort of roustabout—“checking, weighing once in a while, attending the hatch on the barges, and running the engines” (p. 699). It must be understood, at this point, that David Powers is not intimating any disgust, real or simulated, because of any fraudulent manipulation or tampering with the scales. What he is referring to, is the circumstance, that when coal was lifted out of the barges and discharged into the ships, the unweighed tubs, filled when the men “had to meet the hook”, did not have so much coal in them as the tub selected for weighing by the government weigher—a tub that was filled during a halt in the transfer of a succession of buckets from barge to ship, and when the men in the hold of the barge, not called upon to meet the hook, were not under special pressure and haste in shovelling coal into the tubs. We shall have occasion to consider, more particularly, this operation. But it is nowhere testified, not even by David Powers, that the scales on the barges were fraudulently manipulated, or that any greater weight of coal was made to appear by those scales than the true weight of the coal actually placed thereon.

David Powers remained with the Western Fuel Company until 1911, when the company discharged him, and this brings us to his conviction and imprisonment for smuggling opium. He is a discharged employe of the Western Fuel Company, and he was discharged for this crime. At

the same time, a contract in which his father was interested with Mr. Mills, for the trimming of the Mail Company's coal, was taken away (pp. 760-761).

It appears from the testimony of Powers, that shortly before his own arrest for smuggling opium, he had gone to Mr. Mills with an accusation of opium smuggling against the barge-tender of the barge "Melrose"—some two or three weeks before (p. 753). He claimed to have caught this man with the opium, but gave him a chance to throw it away. Mr. Mills thereupon discharged the barge-tender (pp. 753-4). It was within three weeks after this accusation, that David Powers and a man named Feidler smuggled opium off the Mail liner "Siberia", hired a Crowley launch, and took the skiff of the barge Wellington, and carried the opium across the bay, where they were both arrested (p. 757). Powers was released from sentence and imprisonment in the county jail on the second of July following (p. 766). His crime, conviction, and imprisonment constitute the "little trouble", as the result of which "I left the Western Fuel Company's employ" (p. 750).

Powers next appears as an informer, interested to the possible extent of 35% of recoverable penalties, and as a witness "bought and paid for". Powers himself, flatly contradicted as to this by Tidwell, recanting himself later (p. 794), says that Tidwell did not tell him that he would receive a

portion of the fine—nothing of the kind (p. 730); but he does remember that somebody told him “that there are United States Statutes which apply to such cases as this, and which give to the informer a percentage of the fines” (pp. 730-731).

“Q. Who told you that?

A. Oh, I have forgotten the party's name.

Q. You have forgotten the party's name?

A. Yes.

Q. Did the party tell you what proportion of the fines the informer would be entitled to in such cases?

A. I have forgotten.

Q. You have forgotten whether he told you the percentage or proportion of the fine that the informer would be entitled to in such cases?

A. Yes, sir” (p. 731).

And again:

“Q. Where was this party at the time you had this conversation with him?

A. I don't remember.

Q. When was it that you had this conversation?

A. I don't remember.

Q. You don't remember that?

A. I have forgotten the date.

Q. About how long might it have been?

A. Do you want me to tell you something I don't remember?

Q. I am asking you, Mr. Powers, do you mean to be understood as testifying before this court and jury, and as wanting to testify that you have no recollection either in regard to the time or the place or the person with whom you had that conversation?

A. I forget.

Q. Well, can you state at this time whether or not there was more than one conversation in which that statute and that matter was mentioned in your presence and hearing?

A. I don't remember.

Q. Can you recall at this time whether or not there was more than one person who mentioned that statute and matter to you?

A. I forget now.

Q. Well, now, Mr. Powers, have you ever stated to anyone that you did expect to receive a large amount of money from the United States government as a result of the information you had furnished in this case?

A. I don't remember.

Q. Mr. Powers, don't you know that you you have made that statement?

A. Didn't I just tell you that I didn't remember.

Q. I ask you, don't you know, Mr. Powers, that you have made that statement?

A. Didn't I answer that I don't remember?

Q. Answer the question yes or no.

A. I just told you I didn't remember.

Q. Can't you answer that question and tell me yes or no?

A. I told you I didn't remember.

Q. That is all the answer that you will make?

A. That is sufficient, isn't it?

Q. Well, I am not arguing that with you, but can you answer any more definitely than that?

A. No, sir'' (pp. 731-2).

In connection with this testimony of Powers, should be read the testimony of W. H. Tidwell, the chief special agent of the government in this prosecution, whose name, as appears from the indictment, is the name of the single witness upon whose

testimony the grand jury preferred the pending charge. Tidwell testified:

“Q. Did you tell David G. Powers, or did you not tell David G. Powers that a man back in New York had received a very large amount of money from the government by reason of information furnished in a sugar case back there?

A. I do not remember ever discussing the sugar case with Mr. Powers, but as previously stated, Mr. Moore, I do recall discussing the matter of reward with him.

Q. Now, I would like to ask this question: Is it not a fact, Mr. Tidwell, that at the first interview with Mr. Powers you told him that under the statute of the United States you would be able on recommendation, or that the government would be able, by reason of that statute to pay him a reward, or a proportion of the fines or penalties that might be imposed?

A. As I recall it, the matter was discussed between us on the first meeting, but it was a question of moneys recovered on account of the information furnished and not of any fines which may be assessed. I think the law is that up to 35 per cent of the amounts recovered, less the expenses, and so forth.

Q. What per cent, if any, was mentioned as between you and him?

A. In fact, I think I permitted him to read the law.

Q. You showed him the statute?

A. I think so.

Q. And what is that statute?

A. As I previously stated, that an informer could receive up to as high as 35 per cent, within the discretion of the secretary of the treasury, of any amounts recovered, less expenses, and so forth.

Q. Is it your recollection that you exhibited that statute to him also at the first interview that was held between you?

A. I would not say it was the first one, but I exhibited the statute to him.

Q. As I understand you, Mr. Tidwell, that was with respect to a civil suit, was it not?

A. Yes, sir" (pp. 2076-2078).

This, then, is David Powers—a discharged employe, a convicted and imprisoned smuggler, an informer with his eyes on the penalty, looking to be "indemnified, remunerated and despised". But he is this, and something more, he is provably a witness "bought and paid for" at \$3 a day (p. 844). It is the fact, odious and scandalous, but the fact, that David Powers was a bought witness. No sooner had he qualified himself to Tidwell as an informer, than Tidwell, with full knowledge of his personality, his criminal record, and his past, and with a plain purpose to use him as a witness in the trial of this case, purchased and hired his time and his adhesion with the moneys of the taxpayers of this country, clothed him in the mantle of a public servant, and made him into a member of the government service in the capacity of a special agent. Such a transaction, if it could be laid at the door of a private citizen, would be called subornation. And Tidwell was artful about it. He hired Powers on the installment plan, from period to period, in the way of temporary appointments for 90 days at a time. Powers himself testifies:

"Q. When were you first put on as a special agent for the government at the recommendation of Mr. Tidwell?

A. Sometime during 1913.

Q. Sometime during 1913; can you be more definite in your answer with respect to that than by answering sometime during 1913?

A. I don't know the exact date.

Q. No, I am not asking you for the exact date, Mr. Powers, but approximately when was it, please, in 1913, that you became a special agent?

A. Oh, it was back in—it was in 1912 rather, back around August, I believe.

Q. Oh, it was not sometime in 1913, according to your present recollection, but it was back in 1912 and around August, you believe?

A. Yes, sir.

Q. For what length of time would you be appointed in each instance upon the recommendation of Mr. Tidwell?

A. Ninety days.

Q. It was a temporary appointment as special agent for 90 days which could be had upon his recommendation, was it not?

A. Yes, sir" (p. 720).

To illustrate: Powers was a witness in the smuggling case of Robert Donaldson, during the year (p. 771) for which he was employed in the public service. He testifies that within a few days of the trial, he ceased to be a customs agent, and within a few days after the trial, possibly the next day, he went on again as a customs agent, but he had it in mind all the time that he was to become a customs agent again (p. 798). Powers further testifies (pp. 769-770):

"Q. You figured that you would be regularly employed, do you mean?

A. Yes, sir.

Q. You would become a permanent official of the government?

A. Yes, sir.

Q. Then you did have something in your mind about getting a job, did you not?

A. Well, I thought they might, but that was not my reason for telling him.

Q. Well, without regard to what your reason was, did you think that they might give you a job?

A. Yes, sir.

Q. And you thought it ought to be a permanent job?

A. Yes, sir.

Q. None of those 90-day propositions; is that right?

A. Yes, sir."

Indeed, this venal service by Powers as an officer in the government employ, was the first time in his life that he "had been in a job on a regular monthly salary for a year" (p. 771). He had never been on a regular monthly salary with the Western Fuel Company for as long as a year (p. 771).

Our point, now, is this: that even in testimony as infamous as that of David Powers, there is no substantial evidence, there is no evidence whatever, of a conspiracy by these defendants to manipulate the scales in fraud of the government, to the end that the scales should register, not the true weights, but false under-weights of the coal placed thereon. The farthest range that can be given to the testimony of Powers, will not expand it beyond an imputation that in 1905, some eight

years before the finding of this indictment, E. H. Mayer, a defendant in this case, interfered with the rod connecting the scale house beam with the scales below. But Mayer is not on trial for some ancient and outlawed deception, with which his co-defendants have not been connected. The charge here is conspiracy—a criminal partnership to defraud the government in a specified way, as the result of a previous agreement among the partners. What is Powers' testimony as to this incident of the "manipulated" scale rod?

Powers first undertakes to fix the time, loosely between 1904 and 1908. We give his words: "During the years 1904 to 1908, I frequently visited"—now he specifies the place—"the *Mission Street* bunkers, more often indeed than the *Folsom Street* bunkers" (p. 696). On these occasions, he would see Mayer; "he was located in the scales house, weighing the incoming coal and checking it with the government weigher" (p. 696). Next he speaks of the rod: "The rod which connects the bottom of the scales with the mechanism below the floor of the scales house at *Mission Street*, *was exposed* for the entire distance between the table of the scales and the floor of the scales house" (p. 696). He goes on to tell what Mayer did:

"Mr. Mayer used to sit right next to the rod, with his feet on the rod, I saw him put his feet up against that rod *several times*, he used to talk about it himself" (p. 696).

A word of caution here,—not to confuse the precise point, the manipulation of the scale rod, now

in hand. Powers goes on in the next sentence, to speak as follows:

“He used to boast about how much money he was making and how he was robbing the government and robbing the ‘lime juicers’, as he used to refer to them meaning the steamers that used to come there for the Western Fuel Company; every time you would meet him he would tell you about how much he stole or what he was doing.”

Powers is not referring here to the scale rod, but to something in no way involving any manipulation of the scales themselves—he is referring to a “bent link” between two of the coal cars, and he is imputing fraud to Mayer because of the alleged effect of the bent link upon the registered weight of the coal. This comes out in his testimony as to the bent link, a matter which we shall attend to presently. He says (p. 704) that a government weigher made the blacksmith change the link,

“and Mayer spoke about it and said, ‘Why, gee, we ain’t doing a thing to these lime juicers and these other people (he meant the government) with the bent link between the second and third cars’. There were four cars to the train, and the link was between the second and third cars. Mayer told me how he was defrauding the government with this link.”

We have Powers, therefore, stating that between 1904 and 1908, at the Mission Street dock, he saw Mayer put his feet up against the exposed rod several times.

His next statement as to the exposed rod is on cross-examination (p. 776). He says:

“I saw the defendant Mayer with his foot on the exposed rod of the scales at Mission Street dock No. 2, both before and after the discharge of the ‘Dumbarden’. It occurred many times before the discharge of the ‘Dumbarden’, it was a common occurrence, I saw him do it *in 1905*.”

Three things are to be noticed in this testimony: first, that the occurrence is fixed in time by reference to the discharge of the “Dumbarden”; second, that the thing occurred, it was a common occurrence, *before* the discharge of the “Dumbarden”, although he saw it done both before and after; and third, that he saw Mayer do it, not vaguely, between 1904 and 1908, but in 1905; and 1905 is the time that he fixes for the discharge of the “Dumbarden” (p. 825). We are not to be misled by the expression “many times”, or “a common occurrence”; for Powers is not precise in his use of terms. The expression which he uses on direct examination is, as we have already quoted, “several times” (p. 696). But a thing which occurs “several” times, is, with Powers, a “common occurrence”, and of this we have an object lesson in his direct examination (p. 697). He is there testifying as to coal dropping into the bunkers from the hoppers without being weighed, and of carloads of coal being emptied into the bunkers, at the lunch hour, without being weighed at all. No fraudulent manipulation of the scales is here imputed by Powers, but we call attention, at this place, to his looseness of language, and to his con-

foundings, and employing interchangeably, such expressions as "a number of occasions", "many times", "several times", and "common occurrence". His testimony is an object lesson, it speaks for itself, and we now give it from the record (pp. 696-7):

"On a *number of occasions*, at noon or at five o'clock, I used to see the chutes underneath the hoppers at Mission Street opened up so that the coal would run into the bunkers. At such times the government weigher would be away eating his dinner, or if it occurred at night he would be at home. I never saw any government inspectors on the dock at noon-time or after the men were laid off at night. I could not say *how many times* I saw that practice indulged in, but it occurred *several times*. It was *another common occurrence* at Mission Street to load up the car when the weigher had gone to lunch, pass over the scales with it, and at five or ten minutes to one empty such car into the bunkers, and then load it up again and have it ready for the weigher when he came back at one o'clock. Such carload of coal would not be weighed at all."

The net result is, that whereas, on direct examination, he sees Mayer with his foot against the exposed rod, several times, in some vague interval between 1904 and 1908, the cross-examination brings him down to more specific data, he fixes upon the year 1905, and he makes special reference to the ship "Dumbarden", which was discharged in that year.

Further cross-examination brings him still nearer to the identifying marks of the transaction,

to the weigher, Mr. Freund, who was present at the time when Powers saw Mayer with his foot on the rod, and again, and with more particularity of reference, to the ship "Dumbarden". It will be desirable to have his testimony before us (pp. 824-7):

"Q. Now, who was the weigher that was present at any time that you claim to have seen Mr. Mayer with his foot upon the rod of those Mission Street scales?

A. I don't remember, but I do know of *one weigher* that used to warn him to sit back from the scales *all the time*.

Q. Were you present at the time that he gave him that warning?

A. *I believe* I was, yes.

Q. Will you state the name of any weigher whom you saw present there at a time when you say you saw Mr. Mayer with his foot upon the rod?

A. Yes, *Mr. Freund*:—not upon the rod, but I have heard him tell him to keep away from the rod, to step back.

Q. I am asking you now, Mr. Powers, to state the name of any weigher whom you ever saw present there at a time when you say Mr. Mayer had his foot upon the rod?

A. I don't remember.

Q. How many years ago was this?

A. It was many times during the time that I have been around here.

Q. How many years ago would *the last occasion* have been?

A. I would not say about that, *I forget*.

Q. Can you remember *the name of any ship* that was discharging in connection with which that occurred?

A. I believe, or think, it was the '*Dumbarden*'.

Q. You think it was the 'Dumbarden'?

A. Yes.

Q. Well, that was the ship that ran so many tons short, was it not?

A. That is my belief, yes.

Q. Don't you know that Mr. Mayer was not even the weigher upon that occasion?

A. No, *I believe* he was the weigher on that occasion.

Q. Were you present on that occasion while that ship was discharging at the top of these bunkers?

A. *I believe* I was.

Q. Have you any recollection that in point of fact you were present during the discharge of that ship?

A. *I believe* I was; *I think* so; *in my mind, I believe* I was.

Q. In your mind you think you were?

A. Yes.

Q. Are you positive that Mr. Mayer was the weigher who officiated upon the discharge of that particular vessel?

A. Yes, *I believe* he was.

Q. Now, can you name—that was back in 1905—

A. *Yes, before the earthquake.*

Q. Now, can you name any other ship?

A. *No, I don't remember.*

Q. Well, the ship's clerks are present on those occasions, too, are they not?

A. On some occasions.

Q. Are they not generally present?

A. There are times that I have not seen any clerks up there.

Q. Well, then, in the great majority of instances?

A. At times, yes.

Q. Well, was there any ship's clerk present on any of these occasions when you claim you saw Mr. Mayer with his foot upon the scale-beam?

A. *I don't* remember of the clerk being present.

Q. You don't remember?

A. The ship's clerk.

Q. Now, you have weighed on these scales, yourself, have you not, and other scales?

A. Yes.

Q. Well, now, do you know it to be a fact that if there is any extraneous pressure or pulling on a beam of that kind, that it makes the scale extremely wabby and it becomes at once visible, that motion of the beam?

A. I only *heard* just what Mayer did to it.

Q. Well, do you know, yourself, from your own observation as a weigher, whether or not that is the case?

A. I never tried it, no.

Q. Then you don't know as to whether or not, if there is any pulling on the scales, one side or the other, or on the beam, that it makes a wobbling and uncertain motion?

A. No.

Q. Can you give the names of the ships, *or any of the ships*, that you claim were weighed by you?

A. No, *I don't remember* them.

Q. Well, in all those years during which you at intervals were weighing ships on these bunkers, can't you furnish us *with the name of one* that was weighed out by you?

A. No."

We go, now, to the testimony of Mr. Freund, and it will light up the point if we take with us what Mr. Tietjen says. Mr. Tietjen was an expert scales-man, for fourteen years the scales adjuster of the Fairbanks-Morse Company (p. 1377). He is asked:

"Q. What is the effect of the pressure of one's foot against the beam-rod?

A. The minute you put your foot against the beam-rod *it will stop the scale from weighing*. It is really hard to tell how much pressure, it is according to how hard you put your foot against it.

Q. A slight pressure might make quite a difference in weight?

A. Yes, maybe 100 or 200 lbs.

Q. That is, the mere pressure of the sole of the foot against the beam-rod would make a difference of several hundred lbs. would it not?

A. *Yes, probably 500 lbs."*

And, further:

"The mere pressure of the sole of the foot against the beam-rod would be indicated upon the beam so that *anyone accustomed to using the scale could detect it immediately*; the beam would stick right in the center and would not move at the time the pressure was put on it" (p. 1392).

Mr. Freund was "accustomed to using the scale"; on pressure of Mayer's foot against the beam-rod, he "could detect it immediately". He had been a government weigher since 1904, and during the first six or seven years of his service, "about seventy-five per cent of my time was devoted to the weighing of imported coal" (p. 1172). While stationed mostly on the barges, "it was, however, of frequent occurrence that I would be stationed on the Mission Street or Folsom Street bunkers weighing imported coal" (p. 1173).

Mr. Freund testifies:

"I am familiar with the rod which depends from the beam on the Mission Street scales

where the coal is weighed. During that part of the time when I was employed as assistant weigher upon the Mission Street bunker, that rod was exposed. *I can't say for what length of time, however.* If I remember, when I worked there *the first few times* the rod was exposed; then I was away for a time, and when I came back *I found they had boxed it in.* I am acquainted with the defendant, Eddie Mayer, and have known him since I have been in the service. I recall *an occasion* when he was located in the scales-house at the Mission Street dock and permitted his feet to come in contact with that *exposed* rod. I don't know exactly when that occurred, but I think it was just *before the fire of 1906.* He was keeping check with me in the scales-house, which is his ordinary duty. He would sit on the north end of the scale. I sat on the south end, where the **hanger beam** was. We were both facing east. There is a table underneath the beam. Both of us used the table in keeping our books.

Q. Just go ahead and relate all the circumstances connected with this occasion to which you are testifying.

A. Well, as he stepped out, as I say—I don't know what for, but to tell the motorman where to distribute the coal to that was going to various pockets, why, I took a piece of chalk out of my pocket, and I rubbed this rod, and when he came back and sat down, and after I had weighed a load, he sat back and put his feet up on the desk, kicked his chair back, and I says, 'Eddie,' I says, 'Where did you get the chalk on your pants?' and he says, 'Darned if I know.' 'Well,' I says, 'you want to keep your leg away from the rod and cut out your monkey business' and he laughed and called me a lobster, or something, I have forgotten which, *and I simply told him that; that was the end of it, I never bothered with him after'* (pp. 1173-1174).

The testimony of Mr. Freund, then, fixes the occasion—"just before the fire of 1906;" neither he nor Mayer seems to have taken it very seriously; he cautions Mayer to keep clear of the rod—"I simply told him that; *that was the end of it*, I never bothered with him after;" Freund saw the rod exposed, "when I worked there *the first few times*;" "then I was away for a time, and when I came back I found *they had boxed it in*".

It is quite clear, now, that this incident of the exposed rod does not indicate, to the exclusion of any rational view consistent with innocence, or at all, the existence of a conspiracy among these defendants to tamper with the scales, so that, in the fraudulent manipulation of those scales, they would not register the true weight of the coal placed thereon. This rod incident is remote, isolated, personal to Mayer, out of connection with James B. Smith or F. C. Mills. It not only occurs eight years before the return of this indictment, but it is confined to the Mission Street dock, there is not the slightest evidence of such an occurrence at any other dock—at the Green Street dock, or the Vallejo Street dock, at the Howard Street dock, or, again, at the Folsom Street dock, where Mayer was largely occupied, and where the principal weighing operations of the Western Fuel Company were conducted. In the case of Australian and Japanese cargoes, the weighing, as in all other cases, was by a government weigher, and in the presence of the ship's clerk; in the case of a chartered ship, where the charter rates

depended on the custom house weight of the cargo, a representative of the chartered ship, naturally enough, was present; at times, as many as three other people besides the government weigher and the fuel company's checker (pp. 784, 1190); and in all cases, without an exception, the weighing of the imported coal was done by the custom house weigher, who, as Mr. Tietjen says, and as Mr. Freund makes clear enough, would "detect immediately" the manipulation of the scale-rod. The charge of conspiracy is exploded. Tidwell himself is brought to say (p. 572):

"The coal which went into the inshore bunker was not, so far as my knowledge goes, weighed in any different manner, in so far as it was weighed at all, from the coal that went into the offshore bunker. That is to say, my understanding is that the coal which went into the offshore bunker was weighed on the same scales as the coal which went into the inshore bunker. I have said that the coal which went into the offshore bunker was correctly weighed. The scale was not manipulated in reference to that coal, so far as I know. The coal destined for the inshore bunker, which actually went on the scales, was weighed in the same manner as that which was destined for the offshore bunkers. My information is, and I have so stated on redirect examination, that every pound of coal that went into the offshore bunker was accurately weighed."

BENT LINK INCIDENT.

We now come to the incident of the bent link—"That occurred, I think," says Mr. Freund, "around

1906, but I don't recollect whether it was before or after the fire, it was close to that time" (p. 1183). Four coal cars, linked together, would be moved up to the scales, and weighed two cars at a time. One of the links, the one between the second and third car, or rather the angle iron, had struck something, and had got bent or twisted (p. 1353), and the effect seems to have been, as Freund understood it, that this short or bent link in some way held the two forward cars up on the scales a little, making an underweight of about 2000 pounds (p. 1185). On the discovery of this defect, Mr. Freund called attention to it, and Mr. Mills or Mr. Smith, one or other of them, had a longer link put in at once (p. 1185). The first witness to speak of this link is David Powers. He does not pretend to have seen the link himself, and his testimony does not go beyond putting a statement in the mouth of Mayer. We have already quoted this statement in explaining Powers' testimony as to the lime-juicers and the government (p. 704),—in substance, that Mayer claimed to be defrauding the government and the lime-juicers with this link. Powers continues:

"I was present when the existence of the link was discovered. Murray (government weigher) weighed a trainload of cars and was not satisfied with the result; so having weighed the train going one direction, he then switched it back and weighed it going the other, and the discrepancy in the weights was revealed. I did not see the link myself. Mayer told me that the link was bent in such a way that it would lift a certain amount of weight off the last two

cars. He did not tell me how long the link had been in use. Billy (referring to W. R. Olinder, Blacksmith and Machinist for the Western Fuel Company) removed it. I don't know whether they put it back or not. I didn't pay any particular attention to it, though I saw it being taken out" (pp. 704-5).

On cross-examination he introduces Mr. Freund as having been present on the occasion of the bent link (p. 781); he never took the trouble to look at the link, paid no attention to it (p. 781), (p. 783); the blacksmith, he says, was sent for, and took the link out (p. 783).

This blacksmith, W. R. Olinder, testified that he and his helper, Mr. Ewing, made the links that couple up the cars (p. 1352). Some question was raised as to whether this incident took place at Folsom Street or at Mission Street (p. 1357). Olinder puts it at Mission Street, and five or six years ago (p. 1353), it may have been before the earthquake and fire of 1906 (p. 1355). The scales were examined, both by Olinder and by a man from the Fairbanks-Morse Company, but there was nothing wrong there.

"There is an angle iron," says Mr. Olinder, "about two and a half inches by one-half, that holds the draw-head that hooks the two cars together. The link was all right, but the angle iron had come in contact with something and had got bent or twisted, and I saw that I could not put the link back again, so I made three new links out of an old chain, so that they would have free play to get clear. After that they were all right. It was in the middle section

of the train that the draw-head was bent. They continued to operate those particular cars with the three links I had put in, until I had time to throw that car out. I don't know when that was, but I made the repair on the car and put a new angle iron in there, and paid no more attention to it" (p. 1353).

He further explains that these coal cars sometimes run off the track, without getting entirely clear of it; "they get lop-sided so that half of the car goes off, and all out of shape" (p. 1354). This would give the car "a kind of a twist" (p. 1354). "I have never at any time since I have been working for the Western Fuel Company, made a single link that was intended to give that company the best of it in weighing on the scales" (p. 1355). And to the same effect is the testimony of Wesley Ewing, Mr. Olinder's helper (p. 1362).

Indeed, there was no short-weighting in the ultimate and aggregate weight of the four-linked cars. Those cars were weighed, two at a time. The bent link between the second car and the third car is supposed to have lifted up a little from the scales the second car, while that second car was being weighed. The third car had to stand the pressure of this uplift, and when, in its turn, it went upon the scales for weighing, it was still linked to the second car, which had just been weighed, and it was still subjected to that pressure. In other words, the weight of the second car, so far as it went, which missed the scales, was accounted for and reflected in the added weight of the third car. As Mr. Tietjen,

the expert scales man of the Fairbanks-Morse Company expresses it, "the weight taken off the car that was on the scale will be added to the car that is off the scale" (p. 1988). Mr. Tietjen explains and demonstrates this, with experiment and in detail, in his testimony (pp. 1988-1992). Mayer was not defrauding the government, notwithstanding the declaration attributed to him by David Powers. Mayer denies having made any such statement. But the incident, of course, is not evidence of a conspiracy, and in the absence of a foundation, the alleged declaration would not even be admissible. Finally, we come to the testimony of Mr. Freund himself. He says (pp. 1183-5):

"I recall an occasion when there was some trouble with a link connecting two of the cars on the Folsom Street bunker. That occurred, I think, around 1906, but I don't recollect whether it was before or after the fire. It was close to that time. I do not recall the particular ship that was then being discharged.

Q. I want you to go on and state in your own way what that transaction was.

A. Well, there are four cars worked up there and they are weighed two at a time; they are all linked together, one motor-car. I was weighing, and I think at that time Mr. Delaney was clerk for the Western Fuel Company. Having weighed the first two cars of a train, I think the weight went in the neighborhood of something like 17,500 and as they pulled off and they weighed the second two, I saw that the cars were heavily laden and I thought that there must have been something wrong with the weight, so I insisted on the motorman bringing those cars back and reweighing them.

Q. How did you happen to look at the cars on that occasion?

A. You can't help it; here is the run-off and they come out right underneath the scale-house. (Indicating.)

Q. (Indicating). And you did, upon that occasion, observe that the two cars which you weighed were pretty well laden with coal?

A. Yes, and I had the motorman back up his cars, and I reweighed them, and where they first weighed something short of 18,000, the next weight was about 25,500.

Q. The same two cars?

A. The same two cars exactly. I could not understand it. They have a little 'phone in the house there connected with their office down below, and I rung up Mr. Miller, and I said 'Billie, will you ring up the custom house and have Mr. Wooster come down'; he said, 'What is the matter?' I said, 'There is something wrong, I am getting the worst of it up here, have Wooster come down.' So Mr. Wooster came down with Mr. Jim Smith and Mr. Mills and came up and I told them and they couldn't seem to understand how it could be. I went down below with them and Mr. Delaney done the weighing upstairs.

Q. Before you proceed with your statement let me ask you this: The motor and the train of cars are headed as it comes upon the scales in a westerly direction?

A. Yes, sir.

Q. And you ran the *first two cars* upon the scales; is that correct?

A. Yes, sir.

Q. And took the *first weight*?

A. Yes, sir.

Q. Then you ran the *rear two cars* upon the scales and weighed those two cars?

A. Yes, sir.

Q. Then, as I understand it, you required the cars to be pushed backward, that is, in an

easterly direction, and you again weighed in that way the first two cars?

A. I did.

Q. After Mr. Wooster, the defendant, James B. Smith, and Mr. Mills reached the scene of activities, state what occurred.

A. They came up and they looked it over and could not understand it, and finally I believe they rang up and got the Fairbanks scale man down, and Mr. Wooster told me to keep ahead, go ahead and weigh so as not to delay the game; and in the meantime he went on the scale *and he found the scale was perfect*; then we discovered that there was a short link *between the second and the third cars* that when *the first two* got on, the short link in some way *held the cars up a little on the scale* in order to make a difference of somewhere around 2,000 lbs.

"I believe this link was shorter than the links between the other cars. I examined the link myself. I should imagine it had been in service some time. I don't think it was a new link, but I didn't notice particularly. I cannot describe the link in any way. I did not notice any peculiarity about it. *Mr. Mills or Mr. Smith. I don't recollect which, immediately ordered that a longer link be put in.* I have no idea how long that particular link had been used. I had been weighing that train of cars right along for some time."

Mr. William J. Delaney, Deputy Collector of Internal Revenue (p. 1188), is mentioned by Mr. Freund as having been present on the occasion of the bent link. Mr. Delaney has this to say (p. 1189):

"I recall an incident which occurred at the Folsom Street bunkers while I was employed there (in 1905, p. 1189), when there was some

claim made that inaccurate weights were being taken. The assistant weigher at that time was Mr. Freund. Some one or other of us noticed that the scale wasn't weighing properly. There was something wrong with the way the scale was registering so we took steps to have the scales fixed. Mechanics from the Fairbanks-Morse people came down, accompanied by Mr. Wooster, the chief weigher and we knocked off work until the scales were put in order. There was nothing more particularly the matter with the scales than that one of them did not weigh properly."

SCALES-BLOCK INCIDENT.

So much for the bent link incident. It is quite possible that the incident referred to by Mr. Delaney, particularly since he mentions Mr. Wooster, the chief weigher, was not the bent link incident, but another incident, occurring also in 1905, when the scales got out of order, and were promptly repaired and corrected by the Fairbanks-Morse Company. David Powers, while not professing to have any knowledge on the subject, mentions the matter in the way of putting a statement into Mayer's mouth: "I had a conversation," he says, "at Mission Street with the defendant Mayer before the discharge of the 'Dumbarden'". It has already been seen that the "Dumbarden" was discharged in 1905. Powers proceeds to give the conversation: "Mayer then told me that the scales would rest or be upheld by blocks or uprights underneath, so they would not register the true weight, he told me he knew all about it" (pp. 703-4). This is all that Powers has to say. A witness, J. L.

Bley, has some "hazy" recollection of the incident—a San Francisco custom house broker. "I recall," he says, "a ship known as the 'Dumbarden', I recall in a hazy sort of way the discharge of a cargo of coal from her during the latter part of 1905" (p. 1193). At that time, he remembers the circumstance of visiting these scales. He is asked:

"Q. You say you did make an examination of the scales at that time?

A. Well, I would not call it an examination, Mr. Roche, because I had never visited the waterfront practically on a mission of that kind before; I looked at them; I was only there about 15 minutes. I saw the scales, yes, if that is what you want to know, yes, I saw the scales.

Q. Was anybody with you at the time?

A. Yes, sir, the chief weigher.

Q. Upon how many occasions did you visit the scales?

A. I visited the scales once on this occasion.

Q. And did you again visit the scales upon a later occasion?

A. No, I did not visit the scales; I visited the bunkers" (pp. 1194-5).

Bley goes on to say that he was accompanied by Mr. Wooster, chief weigher at the time (p. 1195); and it was this circumstance which led us to suggest that, possibly, it was to this incident of the scales being out of order, not to the bent link incident, that Mr. Delaney was referring. Mr. Bley proceeds:

"Q. What part of the scales did you examine or did you look at, to use your language?

A. Well, it was that portion of the scales where the small cars ran over.

Q. You say that portion of the scales that the cars went over; do you mean the platform?

A. The platform-scale, yes, sir.

Q. Did you *examine* the surface of the platform, or did you go underneath the platform?

A. If my memory serves me I *examined* both; as you call it, I examined both the surface and a portion of the underneath part.

Q. How did you gain access to that portion of the scales located immediately underneath the platform?

A. I don't know whether they were open on account of some repairs or whether they had been opened; that was eight years ago.

Q. You are acquainted, are you not, with most of the defendants in this case?

A. No, sir, I am not.

Q. Do you know Mr. Smith?

A. I have met Mr. Smith, yes.

Q. Just go on and state what you observed after entering the space which is located immediately below the platform of the scales?

A. Mr. Roche if I could refresh my memory up a bit I might be able to tell you more about that. *It was eight years ago, and it was only a 15 or 20 minute transaction, and I have been through thousands of them—I don't mean similar transactions, but thousands of other transactions, and in practically every part of the world.*

Q. What do you mean, Mr. Bley, to refresh your recollection from what?

A. From a drawing of the scales.

Q. You say you did go into this space which was located below the platform of the scales on the Folsom Street dock; you recall that, do you not?

A. I recall that, yes, sir.

Q. Do you recall observing any uprights located underneath the platform scales?

A. Yes.

Q. You are certain about that, are you?

A. Well, I am certain—I remember there were uprights there; I remember that.

Q. Do you recall making an examination of that portion of the scales for the purpose of ascertaining whether the platform of the scales would come in contact with any one of these uprights or with anything underneath the platform?

A. I did.

Q. Now, just go on and tell the jury what you saw?

A. Well, *I don't like to make a definite statement because it is eight years ago and there might be some little detail I might not be correct in.* To the best of my knowledge and belief there was one of the uprights that appeared to have had the platform resting upon it.

Q. Do you recall examining the remaining three uprights?

A. No, I do not.

Q. Is your recollection today the same as it was at the time you made a statement to Mr. Sullivan and to myself?

A. It is the same.

Q. You don't think there is any difference in it?

A. No, no difference.

Q. Let me ask you, haven't you a recollection of examining the tops of the other three uprights underneath these scales for the purpose of ascertaining, if I may refresh your recollection, whether there was any dust upon the tops of these other uprights, or not?

A. It is my impression that there was one of them on the same side that showed that the

scale had touched it that had dust on it. That is my impression.

Q. But it did show that the scale had come in contact with it?

A. On the upright I saw the dust on?

Q. Yes.

A. No, I don't think the scale came in contact with that one; it came in contact with the one I just called your attention to. I remember that there was one of them that the scale came in contact with.

Q. Have you any recollection at this time as to how many uprights there were located under this platform? Do you remember there being an upright at each one of the corners of the platform?

A. My impression is there were four.

Q. Now, eliminating from consideration the particular upright with which you say the platform came in contact, do you recall the space which you observed existed between the remaining three uprights and the platform of the scales? How many inches above the tops of those other three uprights was the platform? Haven't you any recollection upon that subject at all?

A. Why, *it is very hazy* as to the distance between the platform and the top of the upright.

Q. I am not talking now about the particular upright that you say the scale came in contact with, but I am talking about the remaining three uprights. Do you now recall the space which existed between the tops of the other three uprights and the platform?

A. I do not.

Q. Do you recall whether you examined the tops of these three uprights for the purpose of ascertaining whether any part of the platform of the scales had come in contact with any one of those uprights?

A. My impression is that after looking at the other upright on the same side as the one that had been touched by the platform above the one that was out of order, or whatever it was, that I did not examine anything further, and I called the weigher's attention to it.

Q. Had the top of the upright which apparently had come in contact with the platform of the scales been worn down to any extent, and if so, to what extent?

A. Well, it was to some extent; I cannot recall to what extent it was worn down, but it was to some extent; that is, it was visible to the naked eye that the platform had rested on it.

(WITNESS continuing). The upright that I examined had apparently been worn down at a recent date. I remember the chief weigher contended that it must be of recent origin, but my contention at the time, if I remember correctly, was that it might have been for some period past.

Q. Do you recall whether the upper part of this upright was removed?

A. Mr. Roche, I will have to state that all I know about that is what was told me by Mr. Wooster.

Q. Do you recall whether the block which you did see at a subsequent date corresponded with the upper portion of the upright as you observed it while under the scales?

A. The block that was shown me by Mr. Wooster corresponded with that portion of the upright.

Q. Where was the block at the time it was shown to you by Mr. Wooster, if you recall?

A. It was probably at the custom-house.

Q. *Your recollection is not very definite upon that subject, that is as to the exact place?*

A. No.

Q. Do you recall whether there was any dust of any kind upon any part of the top of this upright which apparently had come in contact with the scales?

A. I believe there was.

Q. Do you recall the dimensions of the upright? I don't mean so far as height is concerned, but the width and the thickness of it?

A. My impression is it was 6 by 6.

Q. Are you at all certain, Mr. Bley, that there was any dust of any kind upon the top of this upright, which apparently had come in contact with the scales?

A. I believe there was.

Mr. ROCHE. Q. What I am trying to get at, Mr. Bley, is, is that a definite recollection?

A. No, sir, *I could not state definitely*" (pp. 1195-1200).

This is the direct examination of Bley, all of it; he was not cross-examined, and Wooster was not produced.

The fact of the matter is this: in August, 1905, the ships "Germanicus" and "Dumbarden" were discharged,—with a shortage, in each case, between the invoice weight and the custom-house weight of, say, four hundred tons in a cargo of approximately six thousand tons (pp. 499, 503). The scale expert of the Fairbanks-Morse Company, Mr. Tietjen, was sent for, and made an examination of the scale in the presence of the government weigher. He found that the scale platform had sunk down on the catch blocks, that the difficulty was due to the constant using of the scales, which had been inspected by the Fairbanks-Morse Company only

three weeks prior to the discharge of these ships, and that there was no indication that the scales had been tampered with. The Western Fuel Company paid the duties to the government, in the case of each ship, not on the short weight of the custom-house, but at the figures of the invoice (pp. 502, 503). We now give the testimony of the scale expert.

“Three weeks before the incident of 1905”, says Mr. Tietjen (referring to the incident of the “Germanicus” and “Dumbarden”) “I put the scales in perfect condition; the bolts were tightened, the knife-edge sharpened, and the scales were in as good condition three weeks before this discovery of the resting of the platform on the uprights as they had ever been” (p. 1388).

In 1905, I visited the Folsom Street bunkers on the occasion of the unloading of the steamer ‘Germanicus’ and the steamer ‘Dumbarden’. They had a little trouble with the scales, and I found it and adjusted them. The manager of the Fairbanks-Morse Company sent me down there, and I found that the scale had sunk down on what they call the ‘catch-blocks’ to hold the scale from falling through the wharf. The bolts were pulled through the corner and set down on blocks (p. 1377).

Q. What did you find was the trouble with those scales at the time you examined them on this occasion in September, I believe it was, in 1905, with refereince simply to the unloading of the ‘Germanicus’?

A. At that time when I went down I found that the scale had settled down on these blocks, that is, near, within a quarter of an inch of touching the blocks, and you really could not tell with an empty load but when you

would put a heavy load on it would bear right on the block and would bind the beam.

Q. What was the reason, so far as you observed it, for that scale settling in that manner?

A. The only reason I could give was either the bunkers or the bolts pulling down through the old timber.

Q. Will you point on this blue-print to the bolts that had become loosened, thus causing the scale to settle?

A. Right here (indicating).

Q. The bolts on the corner of this platform.

A. Yes, sir, on the four corners of this platform.

Q. Did you notice how many or to what extent the bolts had pulled or given away?

A. No, they often pull down, especially if the timber is old, half an inch, $\frac{3}{4}$ of an inch or may be $\frac{1}{4}$ of an inch, or anything; it varies at different times.

Q. What was the size of those bolts; do you recall?

A. They were about $\frac{7}{8}$ inch bolts.

Q. Can you illustrate a little more particularly just how those bolts were attached to the timbers?

A. They were put down through the top of the timber, and they have a nut on what they call the corner-iron to hold the corner-iron up. They were round-headed bolts, probably an inch and a half or an inch and $\frac{3}{4}$ in diameter.

Q. Taking this corner of the desk here for the purpose of illustration, it ran from one corner to the other, did it?

A. It ran from the top side right underneath to the bottom of the frame.

Q. How long a bolt was that?

A. 13-inch bolt.

Q. Through what thickness of timber did it run?

A. Through 12 inches of timber.

Q. How was it attached at each end?

A. The top end had a round-head and the bottom had a large nut.

Q. A nut was screwed in at the bottom and a head permanently attached to the bolt on the top.

A. Yes, sir.

Q. What had given way there?

A. That nut had simply pulled down into the wood, the wood was soft, probably beginning to decay, or something, and it pulled it down in the wood.

Q. The nut had pulled down?

A. The whole bolt had pulled down.

Q. By reason of the nut giving way?

A. By reason of the whole pressure on top.

Q. What would be the immediate effect of that?

A. That would cause the whole scale to lower.

Q. And that brought it down on the catch-block?

A. Yes, sir.

Q. Do you know what kind of timber that bolt was imbedded in?

A. Yes, sir, Oregon Pine.

Q. Could the condition of that wood be due to the constant using of the scale, or was it due to any other cause?

A. *It was due to the constant using of the scale and the cars running over it; it was bound to pull it down with the continual hammering on it, and with the timber softening, it would pull into the timber.*

Q. *Was there any indication that that bolt or that scale had been tampered with?*

A. *Not that I could see or know.*

Q. You said that that was due, in your opinion, to the constant wear and the load that was placed upon the scale.

A. Yes, sir.

Q. Will you state whether or not, in your opinion, any other cause contributed to the condition of that bolt than what you have already stated?

A. Well, I don't know of any other cause. *It was simply what I call a natural cause; it is an every day cause; that is the way we term it, an every day cause, that is all'* (pp. 1380-1384).

And further:

"When I discovered that that bolt was loose I tightened it up and sawed the catch-block off a little so as to give a little more play to the scale. I found the scale about a $\frac{1}{4}$ th or $\frac{1}{8}$ th of an inch from the block.

Q. How much distance did you give instead of the $\frac{1}{4}$?

A. About an inch. That would be about the normal distance. The scale was in good working order after the change was made. There was no other imperfection about the scale at that time that I could discover. After the repair, I tested the scale myself and found it to be in good order" (pp. 1384-1385).

Again:

"I noticed the difference in weight at the time of the existence of that defect, caused by the platform resting on the upright. I went down there and we ran a car of coal on the scales and as soon as we did it, the beam on the scales stuck; it would not move; so then I got down underneath and examined it. I remember that you could move the pointer about a ton or three tons and then it would not register at all. The beam would just stick in the center and refuse to move. I have no idea how long that upright had

been interfering with the operation of the scales. I don't see myself why they would not see it when they were weighing. Mr. Wooster sent for me first. I was not surprised to find that the scales were out of order after I had repaired them three weeks before, because that happens often. The defect that I noticed was that the bolt had stuck in the timber. Probably the wharf got out of shape a little bit in taking on a cargo of coal. There was a pulling down through the frame of the scale. I remember hearing at the time from Mr. Wooster that the schooner 'Dumbarden' had weighed out 409 tons short in a cargo of 4707 tons. I don't remember the month in 1905 when this incident occurred. In answer to the question whether I, at the same time, discovered that the steamer 'Germanicus' had been unloaded at Folson Street with a shortage of 350 tons, in a cargo of 5950, I would say that all I know is that Mr. Wooster told me there was a big shortage; I didn't know what it was. There was complaint regarding the shortage on both steamers, however" (pp. 1388-1389).

Again:

"On that occasion in 1905 to which I have referred, a piece of the upright under the scales was sawed off by myself. I took off probably an inch and threw the piece away. Mr. Wooster may have kept it for a keepsake, I don't know.

Q. Was not that piece that you had sawed off the top, wasn't it quite smooth and polished as if pressure had been exerted on it for some time before?

A. Well, it showed, with the coal-dust on it, it showed it had been wearing on it.

Q. The other uprights that had not been touched by the platform were dirt-covered and were rubbed, were they not?

A. Yes, they always are.

Q. But that particular piece was smooth and was polished?

A. No, it was not polished, it shows where a little dirt had scraped on there. It showed a rub, that it rubbed there.

Q. It showed a rub?

A. Yes, sir.

Q. And it showed a friction that had been continued for some little time?

A. Yes, sir" (pp. 1391-2).

And further:

"Q. When you examined the scales previously to the time that the 'Germanicus' and the 'Dumbarden' were unloaded, did you also examine these bolts that you refer to?

A. No, I did not.

Q. So you don't know what the condition of those bolts was at that time?

A. No. You see, in taking out the scale we don't have to bother the corners, we just knock the pins out of the scale and we leave the bolts and the corner-iron in there and the link—we don't disturb that at all.

Q. What do you mean by the expression tightening the bolts?

A. Tightening the bolts is screwing the bolts up in the corner-iron; when they come down a little we screw them up and bring the corner-iron up against the lumber or against the timber.

Q. Did you have occasion to screw up the bolts you afterwards found loose?

A. Yes, sir.

Q. You did not notice, however, at that particular time what the condition of that bolt was?

A. No, I did not.

Q. Did you notice the condition of the timber around it?

A. Yes, the timbers were in fairly good shape, fairly good, but they were beginning to rot out a little.

Q. Will you state what effect would be indicated on the beams if the scales were touching one of those posts in the manner you have described, how that would show itself on the beam?

A. As soon as the bearing-plank would touch that post the beam would stay in the middle, it would not move. Otherwise you could move it out or in. It would just stick in the center, it would not move.

Q. The defective condition of the scale would become immediately noticeable?

A. Yes, sir, it would" (pp. 1393-1395).

Mr. Tietjen says further:

"Q. Are you able to say at what point the scales cease to work when they are in a defective condition such as you found in 1905?

A. They showed they wouldn't work at all. When I went down and put on a car of coal in there the scales simply stood on the center, and I knew what was the matter, that there must be something either broke or hanging on the lever of the scale.

Q. You are not able to state then how much of a weight it was necessary to put on those scales in order to bring the scales down to the top of the block?

A. No. You could probably take and test it with a ton and it would go all right, but if you put 5 tons on it would go right down and rest on it.

Q. There would be a point beyond which it would not register weight?

A. Yes, sir.

Q. But you don't know what that point is?

A. No, I don't know what it is.

Q. It would register weights up to that point, whatever it is?

A. Yes; you may take the scale empty, and it would balance just as nice as it could, but when you put a load of five tons on it it would not work at all.

Recross Examination by Mr. Sullivan.

At the time when I made the examination in 1905, the scales would weight up to a certain point; that is, up to 1000 pounds or 2000 pounds, but when you got a heavier load, of probably 5000 pounds, it would stick. The weighing would not depend upon the position of the car on the platform at the time. Mr. Smith was not present at the time when I made my examination of the scales in 1905, nor was Mr. Mills or Mr. Mayer. The weigher for the Western Fuel Company was a gray-haired man. (Here stated by Mr. Moore that the weigher was Mr. Delaney.)" (pp. 1395-1396).

There only remains the testimony of Mr. Mills (p. 2112). He says:

"I remember a time when the scales got out of order on the Mission Street bunkers—I cannot give the year. The incident occurred in connection with the unloading of the 'Dumbarton' or 'Germanicus'. I went up there and looked at the scales and observed their condition. I found that the bunkers had settled, with the result that the scale, with a certain weight upon it, would rest upon what we call the protecting posts, of which there are four under the scales. As a result of this condition the scales did not register the correct weights. The purpose of those protecting posts was to prevent the cars from going down through the bunkers in case the scales should break.

As a result of the settling down of the bunkers which I have mentioned, the scales came in contact with one of those protecting posts. If that incident occurred in the year 1905, the bunkers at that point must have been about 10 years old. It might have been more than that. I am not quite positive as to the number of years."

And on cross-examination he said (p. 2134):

"I was present at the Mission Street dock when the upright was found supporting the platform of the scales. I did not notice that one of the uprights presented a smooth surface and that the others were covered with dirt. I did not examine the uprights for that purpose—I simply know what the Fairbanks Morse men told me—that the scales were resting on one of the uprights. I did not see it or examine it myself."

SUMMARY AS TO SCALES.

There are, then, these three incidents in the record: the exposed rod incident, the bent link incident, and the scale-block incident. And this is the evidence upon which the government attempted to sustain the charge of a *specific conspiracy*, notified to these defendants in the indictment, a *conspiracy* for the manipulation of the scales used in the weighing of dutiable coal, "to the end that *said scales should record* the weights of said coal desired by the defendants, and not the true weight of the coal placed thereon". The exposed rod incident was back in 1905. It was at one of the docks only, and that was Mission

Street dock. It was a matter pertaining to the defendant Mayer alone, Mr. James B. Smith and Mr. Mills had no connection with it, it was a thing between Mr. Freund and Mayer, and after Freund had spoken of it, the exposed rod was boxed in. The bent link was also an occurrence of 1905, and upon one dock only. It seems to have come about in the partial derailment of the weighing cars, more or less unavoidable, and indeed, the supply of new links was part of the duty of the Fuel Company's machinist and his helper. Mr. Smith and Mr. Mills are mentioned in connection with this incident, but to this extent only, that when the matter was brought to their attention, they promptly saw to it that the difficulty was corrected. The scale-block incident, with the settling down of the platform, was also an incident of 1905, at one of the docks only, and it is fully explained, without blame upon anyone.

**ATTEMPT TO SHOW A CONSPIRACY OTHER THAN THE ONE
DESCRIBED IN THE INDICTMENT.**

The case of the government, in one word, broke down on the conspiracy alleged in the indictment—for it is nowhere pretended, so far as coal weighed out from the barges into the steamships is concerned, that the scales upon the barges were in any way manipulated so as to record falsely the weight of any coal placed thereon. In this posture of affairs, what happened, what did the government do? It proceeded to try these defendants

for something else, for a conspiracy not specified in the indictment. Instead of making out a case against these defendants, such as the indictment goes upon, of conspiring to manipulate the scales, so that they should register falsely "the weight of the coal placed thereon", the government undertook to show that the dock-hands of the Western Fuel Company had attempted to get dutiable coal by the custom-house and into storage at San Francisco, without being weighed at all, or returned for duty, and that the barge-hands of the Western Fuel Company, in the process of making delivery to the steamships, so far from fraudulently manipulating any scales, had kept back from weighing or delivery at all, a certain amount of coal which should have been weighed out and delivered to the steamships, and as to which, on the assumption that it really had been weighed and delivered, the steamship company afterwards collected a draw-back from the government.

AS TO IMPUTED SMUGGLING OF COAL BY DOCK-HANDS.

The dock-hands and the barge-hands—and first, for the claim made as to the dock-hands. The point now making does not call, at this place, for any sharp analysis of the government's testimony, whether it be entitled to consideration as being substantial evidence of *any* wrong-doing, or whether it tend to show *any* conspiracy—the specifications of the indictment apart—to which these defendants were parties. The question here, is, whether the

crime alleged in the indictment is answered to by the testimony of the government. As this court said in reversing the judgment in *Dwinnell v. United States*, 186 Fed. 759:

“However fraudulent the acts of the parties in respect to the relinquishment referred to, they do not constitute the crime *alleged in the indictment.*”

At the docks, it will be remembered, coal was hoisted from the ships into receptacles or bins known as hoppers; from the hoppers it went down a chute into the coal cars; and those cars, by electric traction, were moved on to the platform of the scales and there weighed. It is said by David Powers and his brother Edward, and by the witnesses Waterdoll and Griffin—all of them discharged employes of the company,—that in some instances the coal passing from the hoppers into the cars, would overload the cars, with the result that some of the coal would tumble down into the bunkers below and so escape weighing; that in some cases, there was coal which ran directly from the hoppers into the bunkers below, without being placed on the cars at all, and so escaped weighing; and that some coal was dumped directly from a train of cars into the bunkers below, without being moved on to the scale, and so escaped weighing. But even these witnesses admit, as will appear with more particularity under an independent head of this brief, that the overloading of the cars and consequent tumbling of some of the coal below, was

caused by lumps of coal interfering with the action of the gate by which the flow of coal down the chute from the hoppers to the cars, was controlled; and they say further that the men had no instructions to permit this to happen—this is Waterdoll's testimony—and that he and Griffin, as they both say, did all they could to prevent it. Sass, one of the witnesses, speaks of two instances, years before the indictment, between 1904 and 1906, when some coal ran directly from one of the hoppers into the bunkers; and some of these witnesses say, that on some occasions, coal went directly from the cars into the bunkers. Such a transaction, it will appear, when we come to a more particular consideration of the matter, was not physically possible during the continued and rapid operation, "the merry-go-round", of the cars; and it will further appear that an instance of this dumping of unweighed coal from the cars, alleged to have been done at the noon-hour, is negatived by the uncontradicted testimony to the physical fact that the weighing cars and the hopper chutes were operated by electric current, and that the current was shut off at all times when the discharging of coal was not actually going on.

So much for the passing of coal by the custom-house and into storage without being weighed and settled for. We are stating the matter with sufficient fullness to show the character of the alleged transaction and the line of the government's attempted proof, in respect to what took place at the

dock when coal, in the first instance, was brought into the country. Hereafter, as an independent and wholly distinct head of the argument, we shall consider the subject in detail, and with particularity of reference to the record. But if it could be assumed, for the sake of an argument, that there was a conspiracy to bring on shore, and into the bunkers of the company, imported coal, in evasion of the custom-house weighing and entry, and without paying the duties imposed thereon by law, that would not be a conspiracy for the fraudulent manipulation of the scales, so that they should register a false weight for the coal placed thereon;—it would be a conspiracy to keep the coal off the scales altogether, to bring it on shore without official entry or weighing, and without paying any duties thereon. It would be a conspiracy, not such as this indictment alleges, but to smuggle dutiable coal into the country. If a launch or barge had taken this dumped coal, in the dead of night, from off the importing ship as she lay in the stream, and secretly conveyed it into the bunkers of the company, out of all touch with the scales, the difference would be circumstantial only, not of principle. The case would be one, not of the open and entire introduction into the country of a dutiable commodity, which was then placed upon the scales, and, by some process of tampering therewith, made to reveal a false weight,—it would be the case of a clandestine introduction into the country of unweighed and dutiable goods.

Section 2865, Revised Statutes (3 United States Compiled Stats., 2461, Sec. 5548), comes in at this point:

“If any person shall knowingly and wilfully, with intent to defraud the revenue of the United States, *smuggle, or clandestinely introduce*, into the United States, any goods, wares or merchandise, subject to duty by law, and which should have been invoiced, *without paying or accounting for the duty*, or shall make out or pass, or attempt to pass, through the custom-house, any false, forged or fraudulent invoices, every such person, his, her or their aiders and abettors, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding five thousand dollars, or imprisoned for any term of time not exceeding two years, or both at the discretion of the court.”

The terms “smuggle” and “clandestinely introduce”, used in this statute, are convertible. The words, “clandestinely introduce”, here as in the common law, are “synonymous with smuggling” (*Keck v. United States*, 172 U. S. 443-4, 455).

“Indeed, in the English statutes the words ‘smuggling’ and ‘clandestine importation’, ‘clandestine running and landing’, were constantly made use of, one for the other, as purely convertible terms, all relating to the actual passing of the goods across the line where the obligation to pay the duty existed, and which passing could not be accomplished except in defiance of the duty which the law imposed.”

Keck v. United States, ubi supra.

The terms employed in the United States statute are

“tantamount to an express adoption of the common law signification”.

Keck v. United States, supra.

Under such statute

“smuggling, or bringing in, or introducing goods, has been held by both the circuit and district courts for this district” [the Massachusetts district is here referred to] “for a long course of years to be proved by evidence of a secret landing of goods, without paying or securing the duty”.

Keck v. United States, supra, pp. 456-7.

When the government case broke down on the alleged conspiracy—the conspiracy for the fraudulent manipulation of the scales so that they should record a false weight of the coal placed thereon,—the government turned, as for the transaction at the docks, to the secret and surreptitious landing of the coal into the bunkers, past the line of the custom-house, without weighing upon the scales, without payment of duty. If there was any substantial evidence of a pre-concert thus to smuggle the coal, to which these defendants were the parties, the criminal partners, that was not the conspiracy described in the indictment and notified to the defendants, and the proof of some other crime will not supply the failure of proof as to the crime charged in the indictment.

“However fraudulent the acts of the parties in respect to the relinquishment (smuggling) referred to, they do not constitute the crime alleged in the indictment”.

Dwinnell v. United States, 186 Fed. 754, 759.

AS TO THE BARGE-HANDS.

We go, now, from the dock hands to the barge hands; from the docks or wharves to the barges. The same conspiracy is described in the indictment, in reference to the barges as in reference to the docks,

“to maintain on the docks, wharves *and barges*”, of the Western Fuel Company, “*scales and weights* which were to be and were *fraudulently manipulated* by the defendants to the end that *said scales should record* the weights of said coal desired by the defendants, and not the true weight *of the coal placed thereon*, and the said defendants did so *manipulate said scales and weights* and the method of *weighing thereon*, so that said *scales and weights* did record the weights of coal desired by said defendants, and not the true weight of the coal *so placed thereon*”.

There is not even an “exposed rod” incident, in respect to the barges; nor a bent link nor a scales-block. There is no showing in this record that the scales maintained on the barges were manipulated as alleged, there is no impeachment anywhere of the weights recorded by the barge scales in respect to a pound of coal placed thereon. The government case, as made by the indictment, broke down from utter weakness, and again, as in the case of the docks, the government sailed away from the indictment and took a new tack. The effort, now, of the government, was to show that the Western Fuel Company had bargained to sell to the Pacific Mail steamships a certain quantity and tonnage of coal, at an agreed price, and that the

Fuel Company, instead of fraudulently manipulating the scales, actually kept back from the scales and retained in its own possession and storage, some of this contract coal, without weighing it at all or delivering it, and nevertheless charged and collected from the steamship company as if the full quantities bargained for had been delivered. It was not a case of coal fraudulently weighed on manipulated scales, it was not a case of weighed coal at all; it was all a matter of unweighed and undelivered coal. And in the sequel, it is said that the Pacific Mail Steamship Company collected draw-backs from the government, not on the actual quantity of coal delivered into and burned by its ships, but, as well, upon the coal which the Fuel Company withheld from the scales and from delivery. The whole thing comes down to an imputation that the Western Fuel Company falsely represented to the steamship company the quantity of coal which had been delivered under the contract of purchase.

This new position of the government is explained by and traceable to a government regulation, made for the handling of rough and bulky commodities like coal. The coal was hoisted in buckets out of the hold of the barge, "tripped" into a chute, and sent down that chute into the bunkers of the steamship. The barge would be equipped, say, with four buckets. The process of filling and loading the buckets was a rapid one. The barge-men would shovel the coal into a bucket,

attach that bucket to the hook of the hoisting cable, and send it on its way; and so with the other buckets. The buckets would rise, be emptied into the chute, and come back for more—it was an endless chain. The men were hard put to it to handle the buckets, to fill and dispatch them, “to meet the hook”, as they came and went. It would be impracticable to weigh each particular bucket before sending it on its course; the time was not to spare, and hence a regulation of the government dispensing the buckets from going upon the scales and being weighed except as to one bucket in fifty. The practice at this port was somewhat less liberal—one bucket in fifteen was placed on the scale.

It is not pretended that as to the bucket which was selected and placed on the barge scales, there was any manipulation of the scales, or false registration of the weight. So far as coal from the barges was concerned, it is not questioned but that the coal was correctly weighed on the scales. The claim set up by the government was, that the other buckets, the ones that never got on the scales at all, were not so well filled—not an astonishing thing when the men were being put to it to meet the hook—as was the selected bucket, filled and weighed while all operations were suspended and the men had time and breathing space. The bills of the Fuel Company to the steamship company, for coal sold and delivered, were made up on the assumption that there was as much coal in the unweighed buckets as in the bucket that was placed on the

scales, and the steamship company acted on that assumption, it has always acted upon it, to this day, it has never impeached the transaction, or imputed any kind of fraud to the Western Fuel Company.

It is a far cry, therefore, from an imputation that *unweighed coal* was delivered on the representation that, bucket for bucket, it was the same in quantity as the coal *that was placed on the scales of the barge*, to an allegation in an indictment, that the government and the steamship company as well, were defrauded by the manipulation of barge scales *so that those scales* should record the weight of the coal desired by the defendants, and not the true weight *of the coal placed thereon*. If, recurring again to *Dwinnell v. United States*, 186 Fed. 759, the Western Fuel Company can be said to have obtained money from the steamship company, in respect to the quantity of coal actually delivered, by false pretenses "they do not constitute the crime alleged in the indictment".

It is not implied, in anything that has been said, that the government's contention of a conspiracy in respect to unweighed coal, is founded in the facts. Under a distinct head of the argument, we shall consider this contention in detail, with particularity of reference, and for the exoneration of these defendants from any fraudulent conspiracy, whether alleged in the indictment or not. But the point now making is, that a specific conspiracy is alleged, described and identified in and by the in-

dictment, that upon this conspiracy the government must stand or fall, and that it cannot prevail on one conspiracy by attempting, ill or well, to prove another.

It will not do to say that this indictment does more than to make the bald charge that these defendants conspired to defraud the United States, and to argue that it alleges a conspiracy to defraud the United States out of import duties and drawbacks, and that all else is matter of unnecessary description, and may be rejected as surplusage. Generic statements, as we have shown from the authorities, will not be tolerated in an indictment; the pleader must be specific, he must descend to particulars. An allegation that the defendants conspired to defraud the United States out of import duties, or out of drawbacks, is a mere conclusion of law, in the mind of the pleader; what might appear to his mind, in his opinion, as a fraud, might equally well wear an innocent complexion in the mind of a court, if it were made aware of the particulars on which he rests his conclusion. He must descend to particulars, as the Supreme Court of the United States said in language that we have quoted from the *Cruikshank* case. There are various ways of defrauding the United States out of revenue, as the authorities quoted by us remark upon, and it is for the pleader to make a specification. So it was, here, that the pleader, evidently fresh from the reading of the *Heike* case, descends

to particulars, and describes the offense as turning upon a combination and agreement

“to maintain on the docks, wharves and barges owned, operated, controlled and occupied by said Western Fuel Company, and by the said defendants, at the port of San Francisco in the State and Northern District of California, *scales and weights* which were to be and were *fraudulently manipulated* by the defendants to the end that *said scales* should record the weights of said coal *desired by the defendants*, and *not the true weights of the coal placed thereon*, and said defendants did so *manipulate* said scales and weights and the method of *weighing thereon*, so that said *scales and weights* did *record the weights* of coal desired by said defendants, and *not the true weight of the coal so placed thereon*”.

AUTHORITIES AS TO PARTICULARITY OF ALLEGATION.

But even if the nature of the fraud, its specific character, which these defendants are charged with conspiring to commit, has been, as it is not, described with unnecessary particularity, the proof must correspond with the averments, and nothing descriptive of the offense can be rejected as surplusage. This is the settled rule, both in the federal and in the state jurisdictions. In *United States v. Thomas*, 28 Fed. Cas., No. 16,473, the court said:

“Perhaps it might have been suggested, if the question had been at all argued on the part of the United States, that the indictment states that the nutmegs therein mentioned were imported contrary to law, and that so much of the indictment as states in what the illegality of the importation consisted, may be rejected as surplusage. But the short answer to that is,

that this is a part of the description of the offense, and cannot be rejected as surplusage, even if the indictment would have been good if the particular illegality of the importation had not been set forth; for, if an indictment set out the offense with greater particularity than is required, the proof must correspond with the averments, and nothing descriptive of the offense can be rejected as surplusage (citing cases). But it is believed" the court goes on, "that the indictment would have been bad if the allegations of illegality of the importation had been simply that it was contrary to law—without showing *the facts constituting* such illegality, or stating the *particular illegality* intended to be proved."

In *United States v. Howard*, 26 Fed. Cas., No. 15,403, it is said by Mr. Justice Story:

"But no allegation, whether it be necessary or unnecessary, whether it be more or less particular, which is descriptive of the identity of that which is legally essential to the charge in the indictment can ever be rejected as surplusage."

In *United States v. Brown*, 3 McLean 233, the court said:

"If the prosecutor choose to state the offense with greater particularity than is required by the statute, he will be bound by the statement, and must prove it as laid."

An application of this doctrine, the strictness with which it is insisted upon, is furnished by an eminent judge, Mr. Justice Curtis, in *United States against Foye*, 25 Fed. Cas. No. 15,157. Mr. Justice Curtis says:

“But a far more difficult question arises under the other part of the objection. The indictment alleges, not only that this letter was intended to be conveyed by post, but describes where it was to be conveyed; it fixes the *termini* as Georgetown and Ipswich. The allegation is, in substance, that the letter was intended to be conveyed by post from Georgetown to Ipswich. The question is, whether the words, from Georgetown to Ipswich, can be treated as surplusage. It was necessary to allege, that the letter was intended to be conveyed by post. The words, from Georgetown to Ipswich, are descriptive of this intent. They describe, more particularly, that intent which it was necessary to allege. In *United States v. Howard* (Case No. 15,403), Mr. Justice Story lays down the following rule, which we consider to be correct: ‘No allegation, whether it be necessary or unnecessary, whether it be more or less particular, which is descriptive of the identity of that which is legally essential to the charge in the indictment, can ever be rejected as surplusage’. Apply that rule to this case. It is legally essential to the charge to allege some intent to have the letter conveyed somewhere by post. Suppose the indictment had alleged an intent to have it conveyed between two places where no post-office existed, and over a route where no post-road was established by law. Inasmuch as the court **must** take notice of the laws establishing post-offices and post-roads, the indictment would then have been bad; because this necessary allegation would, on its face, have been false. Words, therefore, which describe the *termini* and the route, and thus show what in particular was intended, do identify the intent, and show it to be such an intent as was capable, in point of law, of existing.

And we are obliged to conclude that they cannot be treated as surplusage, and must be

proved, substantially, as laid. We are of opinion, therefore, that there was a variance between the indictment and the proof; and that, for this cause, a new trial should be granted."

In *Potter v. United States*, 155 U. S. 438, 445, the Supreme Court said:

"It is generally true as claimed that where an indictment is unnecessarily descriptive, even the unnecessary description must be proved as laid."

And the court indicates that the general rule invoked, was not in point, and for the reason that it was not necessary to prove the descriptive matter "otherwise than as it is stated". Said the court, to make the statement complete:

"It is generally true, as claimed that *where an indictment is unnecessarily descriptive, even the unnecessary description must be proved as laid*; but that proposition does not seem to be in point, for it is not claimed that the testimony did not show just such a writing as is charged to have been made by the defendant, and surely it cannot be claimed that *unnecessary matter of description* must be proved *otherwise than as it is stated*."

See also

United States v. Porter, 3 Day, 283, 285-6.

The same rule obtains in the state jurisdictions:

"It is a rule of practice which obtains in criminal as well as civil actions that the allegations upon which the action is founded and the proof adduced must meet and correspond. It is a further rule well settled and established that, where a particular fact or circumstance is alleged as constituting or forming a

part of the descriptive identity of the offense charged, the prosecution is held and limited to that particular state of facts in the proofs adduced to establish the crime; and, further, the court in its charge to the jury is also limited to the matter charged as constituting the offense, and that to submit to the jury in the charge other matters constituting the offense which are not alleged is a radical and fundamental error, which will necessitate a reversal because this court cannot ascertain in such case whether or not the party may not have been convicted on matters not charged against him in the indictment or information. In other words, where the allegation is descriptive of the offense, the guilt of defendant must be found, if at all, upon the ground alleged in the information or indictment."

Randle v. The State, 12 Tex. Cr. App., 251;

Clark v. Commonwealth, 55 Ky., 213, 214;

Commonwealth v. McGowan, 58 Ky., 369, 370;

State v. Newland, 7 Iowa, 242;

Helmerking v. Commonwealth, 37 S. W., 264, 265.

SUMMARY.

Upon the case as made in the court below, and under the settled rules of law, it is now submitted as the clear result, necessitating a reversal of the judgment:

1. The evidence is consistent with the hypothesis that these defendants are not guilty of the conspiracy alleged in the indictment; but more than this—

2. There is no evidence of a conspiracy on the part of these defendants, such as the indictment proceeds upon.

3. The offense must be proved as charged and described in the indictment, and the guilt of defendants, if any guilt there be, must be found, if at all, upon the ground alleged in the indictment.

4. There is no substantial evidence, there is a total failure of proof, of any conspiracy to defraud the United States out of import revenue on coal, or out of draw-backs on coal, by the fraudulent manipulation of the scales, whether at the docks or on the barges, as charged and described in the indictment.

5. The diversion and withholding of imported or draw-back coal from being weighed at all, the dumping of imported coal clandestinely into the bunkers, or the alleged misrepresentation as to the quantity of purchased coal delivered out of the barges, no tampering with the barge scales being shown, does not respond to an alleged conspiracy "to maintain on the docks, wharves and barges, scales and weights which were to be and were fraudulently manipulated by the defendants to the end that said scales should record the weights of said coal desired by the defendants, and not the true weights *of the coal placed thereon*, and the said defendants did so manipulate said scales and weights and the method of *weighing thereon*, so that said scales and weights did record the weights

of coal desired by said defendants, and not the true weight of the coal *so placed thereon*”.

6. As matter of law, there being no evidence of the offense alleged and described in the indictment, these defendants are of right entitled to a new trial, and, it is submitted with respect that it is the plain duty of this appellate court to reverse the judgment and remand the cause.

II.

Regardless of the Offense Charged in the Indictment, and With the Full Realization that the Matter Now to be Propounded Lies Outside of Any Question Made by This Record for Decision Here, it Will Nevertheless be Affirmed and Submitted on the Part of These Defendants.

That the evidence is consistent with the innocence of these defendants as alleged parties to a conspiracy to defraud the United States in any manner or at all;

That the evidence is inconsistent with the guilt of these defendants as alleged parties to a conspiracy to defraud the United States in any manner or at all;

That there is no evidence of a conspiracy, in which these defendants were the criminal partners, to smuggle coal into the bunkers, in fraud of the United States revenue, or to misrepresent the quantity of contract coal delivered out of the barges,

in fraud of the Pacific Mail Steamship Company, or to the prejudice of the United States in the matter of the subsequent draw-backs.

Did James B. Smith, F. C. Mills, and E. H. Mayer agree to act together, did they conspire, for the smuggling of imported coal into the bunkers, and unite themselves into a criminal partnership accordingly? We are on the docks, now, when the smuggling of coal into the bunkers is spoken of. There are references to the subject in this testimony:

(1) To coal, lifted from the ship into the hopper or receiving bin, which passed down from the hopper along the chute and through the gate of the chute, into the cars, at times unchecked by the gate, and in quantity to fill the car to overflowing, with the result that the coal would roll off the car into the bunkers below, and escape the custom-house—escape the weighing and escape the duty;

(2) To coal passed, in some instances, from the hopper into the bunkers below, without going upon the cars at all;

(3) To some loaded cars which are said to have been dumped into the bunkers below without being placed upon the scale.

AS TO COAL OVERFLOWING FROM CARS INTO BUNKERS.

First, now, as to coal overflowing from the cars into the bunkers below. The operation of weighing out coal from a ship at the dock is not a leisurely, otiose, or delicate one. It is a rough and

ready proceeding. The government weigher is there in the scales-house, in command of the situation; with him is the tally-clerk of the Fuel Company, checking his weights; with him again, in the case of an Australian or a Japanese cargo, is the ship's clerk, looking out for the interests of his ship, which depend on the outturn or custom-house weight; and in the case of a chartered ship, the representative of the ship is there, too, directly concerned with the outturn weight, for upon that weight his charter rates are calculated. There are no pauses for relaxation, contemplation, or polite conversation—the bulky coal is rushed through the process without loss of time, and the government itself, aware from experience, calls for no fine adjustment of the scale to a level and an equipoise, but permits, by express regulation, the weighing to be done on the rising beam. It would be natural enough that some coal should be spilled below in a situation like this; and upon this circumstance, it is, that the prosecution seized to impute a fraud, and beyond the act of fraud, to impute a conspiracy in which these defendants were partners.

David Powers has this to say as to the overflowing of coal from the cars into the bunkers:

“I used to see coal discharged”,—he is speaking now of the period between 1904 and 1908 (p. 694)—“into coal cars which were afterwards propelled over to the scales. The bottom of the coal cars is shaped like a pyramid or an inverted ‘V’. When they wished to empty the car they pulled a chain which opens the doors on both sides, and the coal drops

down the slanting bottom. I am familiar with the chutes which open out from the bottom of the hoppers, and also with the chutes which protrude from the north side of each hopper. The cars would coal right underneath the hoppers or at the side of the hoppers at Folsom Street—I have seen it both ways. I have seen the cars loading, but I have not been very close to them during the four years from 1904-1908 and when they were loading. The cars used to be overloaded and the coal would roll off and down into the inshore bunkers.”

David Powers, as he says himself, was not very close to these cars during the period, 1904-1908, for he does not remember to have weighed coal there as much as four times, he does not remember the number of the offshore pockets on the Folsom Street dock, he does not know the capacity of the scales (p. 780).

As to the Mission Street dock, speaking now of the period between 1908, when he quit his brief employment with the Pacific Mail, and December, 1911, when the Fuel Company dismissed him, he says:

“The chutes through which the coal runs from hopper to car are operated by the men on the train by pulling a cord which would open the chute cover and let the coal run into the cars. It was a common occurrence to see the chute thus opened and the coal permitted to run down the sides of the car into the bunkers” (p. 703).

He adds that he never saw anything of that kind at Folsom Street during this later period:

“I never, at Folsom Street, saw the chutes open and the coal permitted to run into the bunkers below without being weighed, during these years 1908 to 1911” (p. 703).

David Powers, then, does not go beyond the statement of what was naturally to be expected, that some coal, in the loading of the cars, would spill down the sides and into the bunkers. He gives no explanation of the circumstance, there is an absence even of insinuation. His brother, Edward Powers, a discharged employee (p. 2111), gives this testimony:

“I have seen the coal coming through the chutes of the hoppers into the cars beneath. I never assisted in loading the cars. I have seen some coal drop down from the sides of the cars. Sometimes a lump would lodge itself in the chute, and they could not close the door until they pried that loose, and so naturally the coal ran out, and would continue to run until they closed the door of the chute. In the meantime the coal would run in the bunkers” (p. 868).

Joseph Waterdoll, like the two Powers, a dismissed employee of the Western Fuel Company (pp. 1041-2), is the government's next witness. He had been employed as a motorman to run the four coal cars on the Folsom Street bunkers. Going there in 1905 (p. 1033), and being summarily dismissed in 1910 (pp. 1041-2); his employments since his dismissal have been very infrequent (p. 1041).

Mr. Waterdoll's enlistment in the cause of the prosecution deserves a word. Some two or three

days before he was put on the stand, a couple of government agents went to his house, and without service of any warrant upon him, without any warrant, told him he was under arrest, took him into custody, brought him down town, put him into a hotel—

“they locked me in and put the key in their pockets, I did not know that they were going to lock me in when they took me there, they did not ask my permission” (pp. 1041, 1040).

He was imprisoned in the hotel from 8 o'clock in the evening until 7 o'clock in the morning, and was taken out for his meals

“by the two government officials that grabbed me”, one of whom “always remained with me during the feeding hour, and when I got through he took me back to this building and put me in a room and turned the key, and I remained under lock and key in that room for the greater part of three days” (pp. 1040-41).

Waterdoll says that he frequently loaded the first two cars in his train, personally loaded them, with coal (p. 1035).

“I would stand,” he says, “on the side of the car and catch hold of the lever and turn it, and the weight goes up and the gates come down. When I would want to stop the flow of coal, I would shut off the conveyor. If the hopper gets away from me, she would be liable to bury my car. That is, the weight would take too much of a run on the gate, and she would overflow; you couldn't pull up the gate quick enough. That occurs quite frequently. The coal would then roll off the car and down into the bunkers underneath. If we could help ourselves we did not try to overload the cars.”

And again:

“When a lump of coal got caught in the chute so that you could not close the gate, I always tried to close it as quickly as possible. I did not want the coal to escape in that way, and when it did escape in that way it was entirely unintentional on my part. Nobody ever told me to allow it to escape in that way. I was told not to overload the cars, and I tried to avoid doing so” (p. 1041).

Samuel Griffin, a sort of roustabout (p. 1062), had worked for the Western Fuel Company “off and on, that is, every time a steamer would come in” (p. 1063), during some indefinite period between 1905 and 1910 (p. 1072). He was discharged by the defendant Mayer (p. 1067), and he has no kindly feeling toward Mayer (p. 1071); since his discharge, he has never done a day’s work for anybody (p. 1072), and the deputy marshals and a lawyer for the government found him and got a statement from him at the City and County Hospital, of which he was an inmate (p. 1071). Water-doll and Griffin—*par nobile fratrum*.

Griffin testifies (p. 1065):

“Sometimes the cars would not be full and sometimes they would be overflowing. The overflow would be thrown off and would go down into the bunkers. I could not tell exactly how often I would see that. Sometimes a lump of coal would go into the chutes, and hold the chute open. Then the dumper would have to run upstairs and try to get the lump out. In the meantime the coal would come out, and what would not go down into the bunkers would be thrown in by the men. The coal

would continue to flow into the bunkers until the lump was taken out, that is the fine coal would flow. Sometimes it would take from two to five minutes to do that. That would happen maybe two or three times a day; maybe it would not happen at all."

Again, Griffin tells of the temporary planking, put down whenever a steamer came in, to keep the coal from going into the bunkers.

"I am familiar," he says, "with the framework of those bunkers. *We were supposed to throw coal that fell upon the top of this framework, or upon or near the tracks or cross-beams, into the cars*, but in fact they shoveled it into the bunkers. I never assisted in doing that myself, but I have seen other men do it. I suppose the planks would be placed underneath the hoppers whenever a steamer came in. Sometimes, however, they would not be there. When the temporary planking was in place, sometimes the overflowing coal would fall upon it. As to what became of that coal afterwards, I believe it really would go into the bunkers, but I could not tell. I believe it would go into the bunkers, they would shovel it down there. I have seen that done" (p. 1066).

If Griffin has "seen that done" it is an object lesson of what workmen would do—they pursued the line of least resistance; to shovel the coal from the planking down the bunkers was easier than to throw it back up on the cars. But, as Griffin has testified, "we were supposed to throw coal that fell upon the top of this framework or upon or near the tracks or cross-beams, into the cars; but in fact they shoveled it into the bunkers".

Griffin testifies further:

“The purpose of the movable planks, concerning which I have testified, was to keep the coal that would fall from the cars from going down into the bunkers below. *I have testified that every time a ship came in, those planks were supposed to be put under the hoppers*” (p. 1069).

And again:

“The planking is placed down, I suppose, to save the coal from going into the bunkers. I stated that sometimes *they forget* to put the planking down” (pp. 1069-70).

Again he testifies:

“A lump of coal would get stuck in the chute lots of times,—sometimes once in two days, and sometimes two or three times in one day. Then the coal would fall down on the track and over the third rail. *We could not help it.* We would try, however, not to overload the cars, because we did not want that to happen. It was supposed to be an accident when a lump of coal got down on the track. We always tried not to overload the cars, but sometimes the situation got the best of us. It was supposed to be an accident when that happened. I did not put the lump in the chute so that it would get caught” (pp. 1070-71).

J. T. F. Burns, a laborer, now employed at the custom-house to assist in the opening up and packing of imported merchandise, officially designated as “laborer” (p. 1154), testifies to a single occasion at the Mission Street dock, in 1908. Regan, a customs officer, had been detailed “to cord and seal the trucks on the sides of the coal cars in the night

time so that the cars could not be moved during the night", and in the morning he would break the seals, and at the noon hour he would reseal the cars. "The chutes themselves were also sealed up" (pp. 1158-9). Regan was present at the time and upon the occasion of which Burns speaks, and if there was anything out of the way, he would be aware of it. Burns says:

"I walked down the tracks when I relieved Regan, I was probably two hundred feet from it, and he was explaining to me what I had to do, and I walked down there and I noticed the way the coal was coming out of the chute into the coal cars; the cars would be brought up half way on the chute, and about one-half of the coal would go into the car, and the other half would go down the chute into the bunkers (p. 1159). One car had been filled, the next car had been moved up, and I notified them if they did not move the car up forward I would seal the car up and send for the inspector" (p. 1160).

Burns, who did not know the name of the workman, just knew the man by sight (p. 1160), is asked, with reference to this man:

"Q. What did he do?

A. He moved the car up and loaded the car and called me a son-of-a-b——

Q. What proportion of the coal was going into the car and what proportion of the coal was going down into the bunker?

A. There was a quarter going out of the chute that went down below into the bunker.

Q. Was that the only time that you saw anything of that kind upon the Mission bunker?

A. Yes, that was the only time on the Mission bunker" (p. 1160).

On cross-examination, Burns repeats that the single incident of 1908 was the only occasion on which he was at the bunkers when they were unloading (p. 1160). We may be, we doubtless are, devoting over much time to Mr. Burns, but we think something more of his cross-examination will be of interest. He is inquired of:

“Q. When the coal flowed over the car on the Mission Street bunker in the way you have described, did you report it to anybody?

A. No, sir, I did not.

Q. Didn't you know that there was an assistant weigher there representing the government?

A. Yes, sir.

Q. Why didn't you report it to him?

A. I thought it was his business to see it as well as it was mine.

Q. You thought it was part of his duty to see whether coal did overflow the cars, or not, did you?

A. Yes, sir.

Q. Did you feel that your duty to the government made it proper that you should report that to him?

A. My duty made me feel that it did, but in order to hold my position I knew it was better not to report it.

Q. What did you go there for at that time?

A. Because I was detailed there.

Q. What for?

A. To relieve this man Reagan.

Q. What was his duty there?

A. His duty was to seal that car and see that they came up all right.

Q. To see that they came up all right?

A. Yes, sir.

Q. You went there for the purpose of seeing whether those cars overflowed, did you not?

A. No, sir.

Q. What did you go there for?

A. To see that the cars were put on the chute right, and to see at quitting time that they were properly sealed.

Q. You went there, did you not, to see that all of the coal was weighed,—that was really your purpose was it not?

A. Yes.

Q. You say that having seen that, you did not make a report of it to anybody?

A. I did not make a report of it because it stopped when I ordered it to stop, it didn't go any farther.

Q. Who was your superior officer at that time?

A. A man by the name of Wooster.

Q. Did you report it to him?

A. No, sir, I did not.

Q. Why didn't you report it to him?

A. Because the man was too dishonest to report anything to.

Q. That man Wooster is dead, is he not?

A. Yes, I am sorry to say he is; I wish he was here.

Q. How long was he in the government service?

A. I can't tell you.

Q. When did he die?

A. I guess he is dead pretty near a year, isn't he?

Q. I don't know; I am asking you.

A. I don't know how long he is dead.

Q. Was he in the government service all the time you were in that service, up to the time he died?

A. Yes, sir.

Q. And he had been in the government service a great many years before you were employed by the government?

A. Yes, sir.

Q. And he was your superior officer?

A. Yes, sir.

Q. And he sent you there for the purpose of seeing whether all that coal was weighed?

A. I could not say whether he gave me the details or who gave it to me, but I got it from his office.

Q. And you knew that you were sent there for the purpose of seeing that all the coal was weighed?

A. Yes, sir, I seen that it was all weighed after I got there.

Q. But you didn't make a report that some of it was not weighed?

A. No, sir.

Q. Do you know who the weigher was that was on the dock at that time?

A. I think the weigher on the dock at that time was Nealon. I could not say for sure; think it was Nealon.

Q. And you did not say anything to him about it?

A. I did not.

Q. Did the response that the man made to you on the Mission Street dock when you spoke to him anger you?

A. No, it didn't anger me; that is one thing nobody can do, is to anger me" (pp. 1161-1163).

And finally:

"Q. You have said that you were under Mr. Wooster?

A. Yes.

Q. Was there anyone over you, and between your grade and that of Wooster?

A. Yes, there were assistant weighers.

Q. Who were they?

A. All the men who were assistant weighers down there.

Q. Were you subject to their orders?

A. Yes, sir.

Q. Did you regard all of them as dishonest men?

A. No, sir, I did not, I regarded them as thoroughly honest.

Q. Why didn't you report this to them, what you saw on the barges?

A. Well, they should have their eyes, it is their duty to see it and not mine.

Q. If they were thoroughly honest men why didn't you call their attention to it?

A. Because I didn't propose to be classified as a stool pigeon going around telling every man what he ought to see, when they ought to see it themselves" (pp. 1164-1165).

Enough and too much of Burns. William J. Delaney, whose testimony we have already noticed in speaking of the scales, had been assistant weigher of customs from 1903 to 1905. During 1905 he acted as checker for the Western Fuel Company when coal was being weighed by the custom-house—on some thirty occasions, not consecutive. For the last five years he has been in the revenue service of the government, and is now deputy collector of internal revenue (pp. 1188-9). He says:

"During the time when I was acting as checker for the Western Fuel Company at Folsom Street, I had occasion to observe the manner in which cars were loaded with coal. *Occasionally it would happen that a car would be overloaded, and some of the coal would fall off into the bunkers below*" (p. 1190).

J. F. Barfield now, and for some nine years an assistant weigher in the custom-house, testifies that

between six and nine years ago—during his first three years in the service—

“I once had occasion to go down from the scales house to the floor of the bunker where the tracks are and where the cars run, and I saw an employe of the Western Fuel Company shoveling coal that I was quite sure had not gone over the scales, down into a pocket—he was shoveling coal from the flooring near the car-tracks. That is the only occasion that I can recall where I had any difficulty in regard to that” (pp. 1170-71).

Barfield frequently weighed on the Folsom Street bunkers during his nine years of service (pp. 1171). The coal shoveler that he mentions had just been employed, and he was reprimanded at once by the defendant Mayer, after Barfield had mentioned the matter (p. 1172).

Mr. Freund testifies, as Griffin did, to the coal shovelers pursuing the line of least resistance. He says:

“I have many times, during the time that I have acted as assistant weigher on the Folsom Street bunker, observed coal being shoveled from the framework or runway into the bins below. I complained to the man himself who was doing that, and, another time, I told Mr. Mayer and he went down and scolded the man in my presence. The operation was not afterward repeated that I saw. I did not again see coal shoveled into the bins below on that ship, but I afterward saw them doing that on other ships, but I cannot say how many times. I made several reports in regard to the work to Mr. Wooster” (pp. 1175-1176).

Albert E. Aitken has been a ship's clerk in this port for some 40 years; "in that capacity, I would look after the interests of the ship-owners in the discharge of the cargo" (p. 1186). Prior to 1906—some seven or eight years before he testified—Aitken acted as ship's clerk in connection with the discharge of imported coal by the Western Fuel Company (pp. 1186-1187).

"In the performance of my duties, I would be located right in the scales house. I would frequently take walks along the stringer, however. The bunkers were open on top most of the time until I made a complaint about them. I noticed on such occasions as I walked down the stringer, if the cars were overloaded, the coal would naturally spill off the top and go down in the bunkers below" (p. 1187).

"Sometimes," he says further, "there would only be one or two little pieces, and other times there would be perhaps a bucket-full" (p. 1187).

He made no complaints to the officials of the Western Fuel Company, but did complain to the chief weigher, also to the clerk that was weighing at the time, frequently complained.

"I complained," he testifies, "to the United States weigher about it, and then they fixed temporary planks to put under the hoppers while the ships were being discharged. That was at the Mission Street dock. When the cars thus overflowed, it was because of too much coal coming out of the hopper by reason of a lump getting caught in the chute" (p. 1188).

Joseph H. Desmond, foreman of the Western Fuel Company, was with the Dunsmuirs for five or six years, and he has been with the Western Fuel Company ever since they took the Folsom Street bunkers—on the bunkers altogether nearly fifteen years (p. 1404). He says:

“When a ship comes alongside the bunkers to be discharged of coal it is my duty to see that a tower or hopper is placed opposite each hatch that is working and that the platforms are all down in their proper places. The platforms are placed under the towers to keep the coal from falling down into the bunker below. We have one or two men employed to clean up such coal as does fall down on these platforms and to shovel it up and put it right back into a car. If I am not present so as personally to oversee the placing of the platforms beneath the towers, my men always take care that that is done. I have seen the custom-house officers come down to the dock before seven o’clock in the morning and go down the runway to see if everything is all down and secured under the bunkers there and that there is one platform under each tower. I have also seen the inspectors looking out for that. The inspectors are the men who have charge of all the weighers and go around the steamers and see that everything is all right” (pp. 1405-6).

And again:

“Occasionally, by accident, it will happen that a chute from one of the hoppers will get stuck by a lump of coal, in which case the coal flows down and off the car. It is then liable to break the shoe off the car and stop all operations. I recollect such kinds of accidents. The shoe connects the car with the third rail and

is the appliance by which the power is communicated to the car. Such coal as overflows through this clogging up of the chute is shoveled back into the car" (pp. 1406-7).

Desmond saw to it "that the electricity was going all right" (p. 1409). The operation was by a third rail method.

"The third rail is between the other two rails of the track. If the chutes got clogged, the overflowing coal would fall down on a pitch and go in by the third rail. The side of the car extends a foot or two, more or less, on each side of the track. The coal gets on to the third rail by coming down at both ends of the car" (p. 1412).

Wesley Ewing, machinist's helper, testifies:

"The chutes leading from the hoppers are sometimes blocked by large lumps of coal. When coal falls over the side of the car, it is shoveled back either into the same train or into the next train that comes along. The trains run by a shoe connecting with a third rail, and if coal is allowed to accumulate upon the tracks, the shoe is liable to be interfered with and the train derailed. That happens quite often. A single lump of coal weighing 20 or 25 pounds frequently interferes with the running of the car" (p. 1364).

Again:

"Coal falling over the sides of cars is piled up and shoveled back into them. There are always one or two men stationed on the bunkers for that very purpose, and anybody else there who is not busy assists. That job is usually handed to a new man. He is told to go up and clean out under the hoppers. I have always heard the man or men assigned

to that job instructed to clean up the coal and throw it into the cars. I have never heard any orders given to shovel such coal down into the bunkers, or any orders to that effect. Anybody would know it was not right to throw that coal into the bunkers. I have personally myself, helped to throw the coal back into the cars, and I have seen Eddie Mayer do that also. If the chute from the hopper gets blocked by lumps of coal, the cars get an overload. If they are so overloaded that the coal spills over, the track is blocked and the operations are, of course, delayed" (p. 1365).

Referring to the temporary platforms or planking, Mr. Ewing states that the position of the hopper is adjusted to the hatch of the ship.

"When the hoppers are thus moved from place to place to correspond to the hatches, we pick up the movable platforms and put them in the new positions of the hoppers. That has always been the custom on the bunkers during my employment there. When ships commence to discharge imported coal, the custom-house weigher is always there to see that everything is in place before the discharge begins. To do that he either goes under the towers or along the inshore track. When I refer to a custom-house weigher, or inspector, I mean the general weigher and the man over him" (pp. 1364-5).

Referring again to the man who keeps the platform clear of coal, Mr. Ewing says:

"The extra man who was employed for that purpose generally loads the coal back into the cars when it spills over. He is continually shoveling and cleaning it up. He puts it in

little piles of 100 pounds or 200 pounds, and, as a car comes along, every four or five minutes, he puts it into the car. He is continually engaged in cleaning up and scraping up the coal that falls from the car. He thus manages to keep the platform pretty free" (p. 1370).

And finally, recurring to the matter of planking, he says:

"During the discharge of a vessel, as I have said, the temporary planking is put under the towers or hoppers so as to cover the inshore bunkers. When the hoppers are very far apart, however, as in the case of a very long vessel with her hatches far apart, there are spaces between the hoppers which are not boarded over, otherwise the space is entirely covered" (p. 1376).

The defendant Mayer says:

"I am at present in the employ of the Western Fuel Company and have been for eleven years; prior to that time I was in the employ of John Rosenfeld Sons for eight years, during the first two of which I shoveled coal in the yard, and during the last six of which I was check clerk, in which position I have continued with the Western Fuel Company" (p. 1985).

Mr. Mayer goes on:

"There are platforms down there at Folsom Street to be placed under the towers during the times that the ships are discharging. At the beginning of the discharge of each ship the custom-house officer and myself generally go down underneath the hoppers to see that the boards are properly placed. I do not instruct the men working on top of the bunkers to purposely allow those cars to overflow as the coal comes down from the chutes so that said coal will spill

down; in fact, I have often warned the men not to do that. If the coal gets down on the track and between the cars it is apt to burn out the wires that connect the motor with the car and disconnect the shoe, and put the car completely out of business. That, of course, detains the work. In the unloading of a ship we generally have one or two additional men on the bunkers to clean up the coal that spills on the boards. It is hard to say how many different men I have employed down there during the time that I have worked on the bunker, but I have had at least 250 or 300. I have employed these men to clean up the coal that might spill on the boards and to assist in dumping the cars" (p. 1987).

Incidentally Mr. Mayer speaks of Griffin and Waterdoll. Griffin had never worked for him for more than ten days, and Waterdoll he discharged "because he was drunk and wrecked a train upstairs and delayed the work a whole half day" (p. 1987, p. 1988, pp. 2019-20).

A. J. Schultz, foreman of stevedores for the Western Fuel Company, has been with the company for eight years, and before that he was for eleven years stevedore for the Southern Pacific Company, unloading coal (p. 1337).

He says:

"At Mission Street and Folsom Street bunkers we simply loaded our tubs and hooked them on the hooks and dumped them into the hoppers on top of the bunker. Each hopper had four outlets, of which two were commonly used. I used to warn the men whenever I saw the cars overloaded. I told them I wanted the cars so loaded that no coal would be spilled. It was inevitable, however, that some coal would be

spilled nevertheless. We used movable platforms when we are discharging a ship. Such a platform is placed under a hopper which is in operation. That is done at my direction. I do not recall any instance where my directions in this regard were not carried out. If some coal happened to overflow the cars, as for instance when a chunk of coal would block the chutes leading from the hoppers, we would gather the overflow into a little pile and shovel it into the next car that came along. I had one man and sometimes two men stationed on the bunkers for this express purpose. The gates to the hoppers are operated by air pressure requiring at least 80 pounds. If a lump gets caught in the gate or chute we jump up and remove the lump as quickly as we can" (p. 1338).

Finally, John Thomas Linehan, for five or six years motorman and dumper of coal cars for the Western Fuel Company, testifies:

"We are supposed to load the cars so that no coal will run off. Those are our instructions from Mr. Eddie Mayer. I have heard him give that instruction to other men and myself up there a number of times. He yells the orders out in a loud tone. Sometimes more coal comes into the car than we desire by reason of the jam in the chute, in which case we jump up on top quick and knock out the piece of coal that is clogging the chute so that the door will go up. When the coal overflows the car it falls on the platform or between the rails. I mean the platforms that are underneath the towers. This planking is placed under the towers before we start to discharge a ship. I, myself, and the other men up there put the planking down; that is part of my duty and a part of the duty of every man there before the ship starts. I have seen the custom-house weighers

come down and see that those platforms are in place. I have also seen the government inspectors up there looking after that. The purpose of the platforms is to catch the coal that overflows so that it won't go into the bunker. We have one or two men regularly employed to scrape up such coal as overflows onto the platforms and shovel it back into the cars. That has always been done since I have been there" (pp. 1422-23).

Again:

"If coal overflows the cars and gets down between the rails the train is crippled, the shoe torn off, and maybe the wires are torn off the train too. I have known that to happen. It has happened to my own train. The consequence is that the discharge of the ship is delayed. It stops the work completely. It was about a month or two ago that this accident last happened. On that occasion the wires were torn off my train and the train caught fire and was crippled for three days" (p. 1423).

We have now considered and presented with particularity, tediously no doubt, the evidence in this transcript, to the point and imputation that coal, passing from the hoppers along the chutes into the coal cars, would be manipulated in fraud to overflow the sides of the cars into the bunkers below, in circumvention of the custom-house, without being weighed, without paying duty. There is no evidence, substantial and satisfactory in character, no showing whatever, the showing is overwhelming the other way, that in the overflowing of the coal as it came from the chutes on to the cars, there was any fraudulent purpose or act upon the part

of any employee of the Western Fuel Company. The suggestion of a conspiracy to which James B. Smith and F. C. Mills, along with E. H. Mayer, were parties, so to defraud the United States, is out of all reason, it is fantastic.

**AS TO COAL PASSING DIRECTLY FROM HOPPERS INTO
BUNKERS.**

Second: As to coal passing, in some instances, from the hopper into the bunkers, without going upon the cars.

David Powers says that "several times," he could not say how many, he saw "the chutes underneath the hoppers at Mission Street opened up, so that the coal would run into the bunkers" (p. 697). But these occasions were "at noon or at five o'clock" (p. 696), when work was suspended or the men had quit for the night. At such times, the electricity by which the hoppers are opened, is turned off (p. 1371, pp. 1996-7)—promptly at 12 o'clock, and again at five o'clock, when the whistle blows. Powers does not say that the coal did run into the bunkers, but that he saw the chutes at Mission Street opened up, so that the coal *would run* into the bunkers. He makes no pretense of connecting Mr. James B. Smith or Mr. Mills with that situation, nor even Mr. Mayer. He speaks only of the Mission Street docks. The defendant Mayer went over to the Folsom Street bunkers within a few months, about six months, after the Western Fuel Company took them over (p. 1986),

and that was in July, 1904 (pp. 2165-6). It was between 1902 and 1904, as Powers says, when Mayer was "mainly at Mission Street," that Powers used to go over there and see him (pp. 777-8). And Powers says further:

"During the four years, 1904 to 1908, I never saw coal being dropped directly from the hoppers to the pockets of the inshore bunker at Folsom Street" (p. 695).

And of the succeeding period, 1908 to 1911, he says:

"I never at Folsom Street saw the chutes open and the coal permitted to run into the bunkers below without being weighed, during these years, 1908 to 1911" (p. 703).

Edward Powers testifies to seeing coal coming through the chutes into the cars, some of it dropping down from the sides of the cars, and he explains, as we have already quoted,

"sometimes a lump would lodge itself in the chute, and they could not close the door until they pried that loose, and so naturally the coal ran out, and would continue to run until they closed the door of the chute, in the meantime the coal would run in the bunkers;—" adding immediately, "*I never on any occasion saw coal being discharged from any of those towers (hoppers, p. 868) directly into the bunkers below*" (p. 868).

As to Griffin and Waterdoll, of whom we have already learned something: Griffin mentions one occasion, that of the street-car strike, when the shovellers, "who are supposed to be down there at seven

o'clock, did not arrive until 8 o'clock," when the customs weigher came on also.

"As soon as we would arrive, we would empty the hoppers before the weigher got there. The coal that came out of the hoppers was dumped into the bunkers unweighed" (p. 1065).

Manifestly, no ship was discharging coal into the hoppers before the weigher got there. This is the same witness who says, as we have already noted,

"I suppose the planks would be placed underneath the hoppers whenever a steamer came in" (p. 1066). "The planking is placed down I suppose to save the coal from going into the bunkers" (p. 1069). "I have testified that every time a ship came in those planks were supposed to be put under the hoppers" (p. 1069). "*We were supposed* to throw coal that fell upon the top of this frame work or upon or near the tracks or cross-beams, *into the cars*, but in fact they shoveled it into the bunkers" (p. 1066). "Except that time" (p. 1065-6) referring to the occasion of the strike, Griffin says he "did not receive any instructions or directions from the defendant Mayer at any time in reference to the discharge of coal".

There is not the remotest intimation in respect to Mr. Mills or Mr. James B. Smith. And Water-doll, whose service was somewhat more prolonged than that of the "ten day" man Griffin, nowhere testifies to coal running directly from a hopper into the bunkers, and he says unequivocally that the defendant Mayer never said anything to him upon that subject (p. 1043).

Robert Sass, at one time employed on the barges, and in shoveling and trimming coal for the Fuel Company (pp. 1096-7), an old friend of the Powers family, living in one of their houses (p. 1100), speaks of two remote and vague instances of some coal running from a hopper into the bunkers "after five o'clock". We give his testimony without comment:

"Twice I saw coal running out of the hopper unto the bunkers after five o'clock. The work was all stopped and I was making the barge fast, tying her up for the night, and I heard the noise. It was the coal running that attracted my attention, and I looked up to the bunker and saw the coal running out of the hopper into the bunker. It was coming right out of the hopper into the bunker. I did not see anybody there at the time. I do not know who opened up the chute. I saw one hopper emptied in that way on one night, and the other hopper emptied on the next night. It was so long ago that I cannot fix the dates when that took place." (pp. 1099-1100).

And again:

"On the two occasions, when I saw coal running out of the hopper, I do not know whether the hopper was full or not. I do not know whether sometimes, when a vessel has been coaled, they have to clean out the hoppers. I do not know whether the coal that I saw or heard running out was foreign or domestic coal" (pp. 1101-2).

It would be necessary, of course, to clean out the hoppers, before discharging a new ship. And it would be the duty of the shovelers to throw that

coal from the temporary planking into the coal cars. "I have testified," says Griffin, "that every time a ship came in those planks were supposed to be put under the hoppers." And again, "The planking is placed down, I suppose, to save the coal from going into the bunkers; I stated that sometimes they forget to put the planking down" (pp. 1069-70). And again: "*We were supposed to throw coal that fell from the top of this framework or upon or near the tracks or cross-beams, into the cars, but in fact they shoveled it into the bunkers*" (p. 1066).

Desmond, the foreman, fixes the time of the car-strike as in 1907; during the strike, ships did not commence to discharge until 8 o'clock, a custom-house officer was present at the discharge, and no coal went into the bunkers without being weighed (pp. 1408, 1414).

AS TO COAL DUMPED FROM CARS INTO BUNKERS.

Third, as to coal dumped from loaded cars, without first being weighed:

Once more, we have Griffin and Waterdoll. Griffin says that they

"would *sometimes* load the cars up and then *open the side doors* of the cars, so as to let the coal down into the bunkers below; at that time the cars would be located beneath the hopper. That was done *under Eddie's directions*. No part of that coal was weighed" (p. 1073).

Coal, then, was dropped from an opened and loaded coal car, while that car was still at the

hopper and before it was brought on the scale, and this under Mayer's direction. But Griffin becomes a little more definite:

"I have seen cars unloaded before the coal would be brought upon the scale, that would be done whenever they got a chance to pull the doors open, the motorman would do that under Eddie Mayer's directions" (p. 1066).

The expression, "whenever they got a chance", is the mere opinion or conclusion of Griffin, for he proceeds to say:

"I never pulled them open myself, but saw other men do it; I did not know of the presence of inspectors upon that dock" (p. 1066).

And as to Mayer directing anything of the kind, he goes on to say:

"Eddie Mayer said when there was nobody around 'dump the cars if you get a chance'.—*He made that statement only once.*"

This is the same Griffin, as we have noted, who testifies that

"we were supposed to throw coal that fell upon or near the tracks or cross-beams, into the cars, but in fact they shoveled it into the bunkers" (p. 1066).

His evidence as to the words that he attributes to Mayer, "dump the cars if you get a chance," a remote and single instance, contradicted by Mayer (p. 1992) is neither substantial nor satisfactory evidence.

"In all cases it is the most dangerous species of evidence that can be admitted in a court of

justice and the most liable to abuse. In most cases it is impossible, however honest the witness may be, for him to give the exact words in which the declaration or admission was made. Sometimes even the transposition of the words of a party may give a meaning entirely different from that which was intended to be conveyed. The slightest mistake or failure of recollection may totally alter the effect of the declaration or admission. And more than this, it is most unsatisfactory evidence, on account of the facility with which it may be fabricated, and the impossibility, generally, of contradicting it when false”.

Davis v. Davis, 26 Cal. 23, 44;

Mattingley v. Pennie, 105 Cal. 514, 523.

But Waterdoll brings the thing out into fuller light. In the first place, Waterdoll does not pretend that there was any practice or system of this kind, the thing was occasional, not happening very often.

“The cars,” he says, “are discharged by a door with a rope on each side which you pull; that permits the coal to fall down and slide off the cars. I saw those cars being discharged before they went on the scales; *not quite often however*. I received instructions from Mr. Mayer to do that” (p. 1036).

Indeed, the most he can be made to say is, that it was done more than once:

“I received instructions from the defendant Mayer to dump a car into the bunkers before it would reach the scale, I did that, it is pretty hard to say how often, I never kept track of that matter. It was certainly done more than once. I never noticed that done with the other

train—I was too busy taking care of my own train” (pp. 1037-8).

But this is not all from Waterdoll. There is a beam extending underneath the scale house and across the bunker, and if a car has too much coal, the coal will strike the beam, with danger of breaking the scales. Says Waterdoll:

“I know of the beam that lies across the bunker and underneath the scales-house. I have seen that beam come in contact with coal upon the cars. *I would myself* throw off some of the coal so it would not strike the beam, *because otherwise there would be danger of breaking down the scales.* During the time I was working for the Western Fuel Company, the scale was interfered with by reason of that beam coming in contact with the lumps of coal” (p. 1038).

And further:

“We were told both by the custom-house officer and by Eddie Mayer not to load the cars so high that the coal would come in contact with the beam in front of the scales house. *Eddie told me that, and told me that frequently.* If we ran into the beam the scales would break” (p. 1042).

Again:

“If we had an over load on one car, we could not get on the scales with that load on account of a bog beam that lies across, and the danger of breaking down the scales; so that *we would open one side of the car*, and the coal would drop down into the bunkers” (pp. 1036-7).

And finally:

“I used to load from hoppers numbers one and two, and sometimes from numbers three

and four. If my car was overloaded, *I would pull the rope and let half of it go into the bunker below* and then load her up again.

Q. Why would you do that?

A. I did not want to hit the top of the beam and break the scales" (p. 1039).

The foreman, Desmond says:

"If a car goes on those scales so overloaded that the coal would scrape and grind against that beam, the result would be that sometimes the scale would be broken down and sometimes the coal would be thrown off the car. As a matter of fact, I have seen the scales actually break down two or three times from that cause. Even without being ground against the beams at all, the cars are sometimes so fully loaded that their weight is pretty close up to the capacity of the scales. If the car is loaded too high the men trim it off before they get to the scales. If they did not do so the scales might be broken down. For that reason Eddie Mayer two or three times gave orders for the men not to load the cars so heavily. I heard him say that and it was my permanent or standing order all the time" (p. 1405).

And further:

"I have heard Eddie Mayer severely reprimand the men for bringing the cars up to the scales house overloaded" (p. 1406).

And the motorman, Linehan, says:

"I know that there are a couple of beams upon which the scales house rests. Our orders are not to overload the cars so heavily as to strike those beams" (p. 1423).

Mr. Ewing says:

“I remember that there are a couple of large beams upon which the scales house rests at the Folsom Street bunkers” (p. 1363).

A photograph is now shown him, and he continues:

“I see in this photograph what I term a sill for the scales house, which consists of two large beams. The further beam runs clear across the track on which the cars approach the scales. It runs overhead and is over the scale platform itself; in fact, it is right over the scales. Any coal that would be brushed off of a car, as the result of a car being overloaded, would fall upon the scale platform” (p. 1363).

Further:

“I have seen Mr. Mayer hold up cars that came to the scale house so overloaded that the coal would be likely to come in contact with the beam. He would hold the car back until the man leveled the car off so that the coal would not touch the beam; Mr. Mayer always said to be more careful and not overload the car” (p. 1365).

And again:

“I have known the scales on the bunkers to break down by reason of the overloading of the cars. I have several times seen Mr. Mayer stop a car because it was overloaded, and tell the men to smooth the load down on top, so it wouldn't strike the beam” (p. 1372).

And Mr. Mayer has

“had experience in regard to cars loaded to such an extent as that when they came on the scales at the Folsom Street bunkers, the coal

would grind against one of those beams. Shortly after I went to work on Folsom Street, for instance, one of the men came up there with a full load of cars which struck those beams and broke my scale down" (p. 1986). "I have," he says, "often warned the men not to overload those cars" (p. 1987).

The intimation is thrown out by Waterdoll and David Powers, that there were times when a train-load of cars—the four cars used at the bunkers,—would be dumped into the bunkers or pockets without being weighed. Waterdoll, at the close of his direct examination, without any specification of time, or occasion, or circumstances, and without, in the remotest way, connecting Mr. Mills or Mr. James B. Smith, says baldly:

"At the request of Mr. Mayer I discharged *a train-load* of coal into one of the pockets or compartments of the inshore bunkers, without bringing it on the scale" (p. 1039).

Upon cross-examination, he first charges the defendant Mayer with wanting him to open the gate of the hopper, and let the coal run into the inshore bunker, but upon being pressed, he turns a right-about face, contradicts himself as to the hoppers, and attempts to substitute the cars. Here is his cross-examination, he begins by saying:

"When the custom-house inspector was not there I understood that Eddie Mayer wanted me to open the gate of the hopper and let the coal run into the inshore bunker.

Q. You did understand that?

A. Yes, sir.

Q. But notwithstanding that you said on your direct examination *you didn't want to allow these hoppers to become clogged under any circumstances*, did you not?

A. Yes, sir.

Q. Didn't you say that?

A. Yes, sir.

Q. And now you say that Eddie Mayer did want you to open those gates and allow the coal to flow into the inshore bunker?

A. That was when we were *going back*; he would tell you to do that when *going back* to the pockets" (p. 1042).

Attention is called to his explanation about *going back* with the cars to the hoppers. It will be of interest presently. But his explanation does not explain, and he is asked again:

"Q. Now, I will ask you again: did you understand from the instructions given to you by Eddie Mayer, that he wanted you to open the gates to the hoppers and allow the coal to flow into the inshore bunkers without being weighed?

A. He *never said the hoppers*, he said *the cars*.

Q. He did not say the hoppers?

A. No" (p. 1043).

Having first affirmed and then denied the hoppers, and having substituted the cars, we next find Waterdoll "*going back*" with the cars to the pockets. He is asked:

"Q. Then when you said a few moments ago he did want you to open the gates of the hoppers to allow the coal to flow into the inshore bunkers, you were mistaken?

A. No sir, that would be running your car underneath"— underneath, that is, the hop-

pers,—“to load up your cars and go back with them, back to the pockets” (p. 1043).

But to get the cars back to the pockets, “you have” he says, “to go up around the scales house and come down the other way” (p. 1044). It will be remembered that the cars would pass the scales house on one track and go around, beyond the scales, and back upon the other track to the bunkers, returning to the scales track in regular procession, a “merry-go-round”, one train following the other (p. 1366). Waterdoll is asked:

“Q. That is it, you had to pass the scales house and get on to the north track; is that what you mean?

A. Yes sir.

Q. And in doing that you would not get out to the offshore bunkers at all, would you, until you had passed the scales-house?

A. No sir.

Q. So in that operation you would pass the scales twice—that is, you would pass the scales platform on the southerly track and you would pass the scales platform on the northerly track, would you not?

A. Yes sir.

Q. That is corect, is it not?

A. Yes sir.

Q. *And during all of that time the government weigher would be in the scales-house, would he not?*

A. Yes sir.

Q. And those are the occasions under which and in which Eddie Mayer advised you to dump coal without having it weighed?

A. No sir.

Q. Well, what are the occasions then?

A. The occasions are when you are on the inside, when you are getting the coal *out of the*

hoppers, he would tell you to run a train *back to the pockets* and dump it" (p. 1044).

But again, precisely here, as in the case of the *hoppers*, Waterdoll flatly contradicts himself, for, on his direct examination, he testifies:

"I never received any instructions to run these cars backward from one of the forward *hoppers* and discharge the coal without its being weighed" (p. 1037).

So much for Waterdoll. He neither proves the circumstance against Mayer, nor does he, by the slightest suggestion, connect Mr. Mills or Mr. J. B. Smith. This leaves Mr. David Powers.

In the first place, Powers nowhere testifies that at any time during the operations at the bunkers, whether in the forenoon or in the afternoon, was a train-load of cars run back to the bunkers and dumped without being weighed. What he has to say concerns the bunkers at the noon hour, when operations were suspended and the motive power, the electricity or "juice", was shut off. He had been speaking of the Mission Street chutes being "opened up so that the coal *would* run into the bunkers," an item of his testimony which has been already considered. He saw this "several times" (p. 697). He goes on to speak of "another common occurrence," this also at Mission Street, to dump a loaded car during the noon hour. We call attention, again, as we have done heretofore, to his use, loosely, of the term "common occurrence" as being interchangeable with "several times".

"It was another common occurrence," he says, "at Mission Street, to load up the car when the weigher *had gone to lunch*, pass over the scales with it, and at *five or ten* minutes to one, empty such car into the bunkers, and then load it up again, and have it ready for the weigher *when he came back at one o'clock*. Such carload of coal would not be weighed at all. The defendant Mayer certainly saw these operations to which I have just testified." He adds that "during the four years, 1904 to 1908, the defendant Mills would be upon the docks, but not upon the bunkers, when coal was dumped into the bunkers" (p. 697).

As to Mr. J. B. Smith, he makes no reference whatever.

Powers, now, is speaking of Mission Street. It will be remembered from his testimony, which we have heretofore noted, that, it was between 1902 and 1904, that Mayer, who "certainly saw these operations," was "mainly at Mission Street," where Powers says he used to see him. Between 1904 and 1908, as we have already pointed out, Mayer was the tally-clerk at Folsom Street, and of Folsom Street, Powers says:

"During the four years, 1904 to 1908, I never saw coal being dropped directly from the hoppers to the pockets of the inshore bunker at Folsom Street, nor did I ever during that period see any coal being brought over the scales at a time when the government weigher was not present" (p. 695).

That being the situation at Folsom Street, during the four years from 1904 to 1908, Powers has this to say of the three years from 1908 to 1911:

“A number of times they used to load a car up *just before* the weigher would go to lunch, that is, *a few minutes before 12 o'clock*, and run it over the scales and back again, and switch it back *five minutes to one*, dump it into the bunker, and then *load it up again*, before the weigher returned. That occurred both at Folsom Street and at Mission Street, and was frequent” (p. 703).

This statement, while making no pretense to impute any participation by Mr. Mills or, needless to say, by Mr. J. B. Smith, nevertheless, in and of itself, as to the circumstance indicated, is inherently improbable and grossly untrue. In the first place, for the period 1902-1904, Powers was time-keeper for Mr. Mills, who was taking contracts then to trim coal on outside steamers, and Powers had no call or business to be at either Mission Street dock or Folsom Street dock during working hours, and certainly not during the noon hour when work was suspended, and when Mayer, like the government weigher, had gone to his lunch (p. 686). Between 1904 and 1908, Powers was still time-keeper for Mills, but in addition, was employed by the Fuel Company as track-tender upon the Pacific Mail docks, which were at the end of Brannan Street (p. 686, p. 688). Powers himself says:

“My duties as track-tender during those years, 1904 to 1908, consisted in taking care of the track, and when the engineer was sick, in running the hoist on the barges, and also *occasionally* in acting as assistant weigher to Mr. Mayer in the importation of coal *at the*

Folsom Street dock. I was not employed steadily, but was paid by the day, and I did not work every day. I would be laid off when there was no ship in" (p. 689).

In 1908, Powers, as we have seen, was intermittently employed by the Pacific Mail, some sixty days altogether, and then went back to the Western Fuel Company, "checking, weighing once in a while, attending the hatch on the barges, and running the engine" (p. 699). He was hatch-tender, at intervals, for about a year or a year and a half, but had nothing to do with the loading of the barges from the bunkers; he used to run the barge-engine quite frequently—the hoist engine (p. 699):

"I sometimes acted as assistant to Mayer in loading coal into the barges at Folsom Street after I left the Pacific Mail Steamship Company. This was *only occasionally* to relieve Mr. Mayer when he was at Mission Street" (p. 702).

He was never employed, he had no business, except possibly in this occasional way, at the Mission Street dock, or the Folsom Street dock (p. 780).

The motive power at the bunkers was electricity. The hoppers and chutes from and through which the hoisted coal passed on to the cars, were operated by electricity. The cars were moved from the hoppers along the tracks to a scale platform, on the south track, by electricity, and thence, by the same electricity, they were switched around upon the north track and back to the bunkers where they

were dumped—all the while, the motive power being electricity. That electricity was not controlled at the bunkers at all, but at the power house; it was shut off promptly at noon; it was turned on after the noon hour just before one o'clock, a couple of minutes before; it was shut off again at the close of working hours, at five o'clock. At 12 o'clock, the weigher and the company's tally-clerk, Mr. Mayer, mainly at Folsom Street, like everybody else, went to lunch. The weigher was back at 1 o'clock, Mr. Mayer too, the men at the bunkers as well, to resume operations, and the power was on again to set and keep things going. If there was a loaded car on the track within five minutes of twelve, it was an almost instantaneous process, a matter of a few seconds to weigh it. It is inherently improbable, it is unbelievable, that the government officer would leave it unweighed before the power was shut off at 12 o'clock. And returning as he did at 1 o'clock, to resume operations, and not later than one, it is just as incredible that such a loaded car, a couple of minutes before 1, would be switched over from the south track to the north track, and back upon the north track to the bunkers, and dumped into the bunkers and moved up to the hoppers and re-loaded there, and then moved up to the scale platform to be weighed, when that same car is assumed to have been loaded but unweighed at five minutes to 12, before the power was turned off, and while the government weigher was still on the bunkers. The car would be weighed, if

loaded before 12 o'clock; and if the power went off, as it did, sharply at noon, that car would stand on the track until the current was turned on, and then it would be switched to the north track, taken back to the bunkers, and dumped. No loaded car could be passed over the scales on the south track and returned by the north track to the bunkers, without the electricity; and the electricity was not there when the government weigher left the bunkers, and it stayed off until he came back.

When Powers was asked about the electricity, he was not full of information.

"I do not remember," he says, when the 'juice' goes out of the third rail" (p. 814).

Again:

"I do not know that it is at 12 o'clock sharp that the electricity goes out of the third rail" (p. 814).

Again:

"I do not know that the company generates its own electricity, I think the electricity was furnished by the city, I think they had switches, and that the city furnished the electricity, but I am not sure of it" (p. 814).

Again:

"I do not know that it is a fact that the Western Fuel Company generates its own electricity, and that the electricity goes out at 12 o'clock sharp when the whistle blows" (p. 814).

But this record is not left to depend on the ignorance of Powers.

"The electricity is turned off promptly and accurately at the noon hour. After that there is no electricity on the bunkers until a couple of minutes before 1 o'clock" (p. 1371).

The situation is clearly revealed in the testimony of Mr. Mayer:

"The 'juice' to the Western Fuel Company is supplied by the Power House. We never get power from another company on those bunkers. The switch that controls the 'juice' on the bunkers is in the power house. *We have no switch upstairs*" (p. 2019).

He is asked:

"Q. I wish you would state to the jury what does happen on top of those bunkers with respect to cars that are loaded just before 12 o'clock.

A. The men load up the four cars just before 12 o'clock and they bring them on the scale and weigh them; if they have not got sufficient time to dump those cars before 12 o'clock *they leave them stand on the track*, it is done repeatedly—in fact, it is done almost every day; *at 12 o'clock we go to dinner, and about 5 minutes to one or a few minutes to one* the 'juice' is turned on, *it is off sharply at 12* and is turned on again *a few minutes before one*, and the men leave the cars standing on the tracks, and a few minutes to one,—*it has been weighed by the government*, and a few minutes to one *they take the cars down and dump them*. That has been done numerous times.

Q. If cars are loaded just a moment or two before 12 o'clock and get down to the scales at 12 o'clock, is it possible to run those cars any longer after 12 o'clock, when the whistle is blown?

A. *No sir. We have got stuck with cars on the scale loaded, the whistle blew and the power goes off.*

The power goes off at 12 o'clock sharp, and comes on a few minutes before 1 o'clock, and then goes off sharp at 5 o'clock again, and after that the plant is dead and the cars could not be operated or the hoppers opened" (pp. 1996-7).

But the "inherent improbability" (*Farley v. Hill*, 150 U. S. 572, 576) of Powers' story as to the noon hour, apart from its contradiction and the explanation of conditions as they really existed, is enough to discredit it with the court. In the case of *The Dauntless*, in the Circuit Court of Appeals for the Ninth Circuit, 129 Fed. 716, 721, this court said:

"This court is not bound to accept the statement of any witness simply because his testimony is uncontradicted, nor even when corroborated by other witnesses, if the story they all tell bears the earmarks of inherent improbability and is unreasonable.

The rule in relation to this subject is well expressed by Mr. Justice Field in delivering the opinion of the court in *Quock Ting v. United States*, 140 U. S. 417, 420, 11 Sup. Ct. 733, 734, 35 L. Ed. 501, as follows:

'Undoubtedly, as a general rule, positive testimony as to a particular fact, uncontradicted by any one, should control the decision of the court, but that rule admits of many exceptions. There may be such an inherent improbability in the statement of a witness as to induce the court or jury to disregard his evidence, even in the absence of any direct conflicting testimony. He may be contradicted by the facts he states as completely as by direct adverse testimony.'

This court has announced the same rule. *Lee Sing Far v. United States*, 94 Fed. 838, 35 C. C. A. 327, and authorities there cited. See,

also, *Changler v. Town of Attica* (C. C.) 22 Fed. 625, 627, and authorities there cited; *Tracey v. Town of Phelps* (C. C.) 22 Fed. 634; *McLean v. Clark* (C. C.) 31 Fed. 501, 504; *People v. Milner*, 122 Cal. 171, 179, 54 Pac. 833; *Anderson v. Liljengren*, 50 Minn. 3, 52 N. W. 219.

"In *Blankman v. Vallejo*, 15 Cal. 638, 645, the court said:

" 'We do not understand that the credulity of a court must necessarily correspond with the vigor and positiveness with which a witness swears. A court may reject the most positive testimony, though the witness be not discredited by direct testimony impeaching him on contradicting his statements. The inherent improbability of a statement may deny to it all claims to belief.' "

We have now examined this record for "substantial evidence" as to the dumping of a train load of cars on the bunkers, whether at Mission Street from 1902 to 1904, or at either Mission or Folsom Street from 1908 to 1911; we find no substantial evidence of the circumstance as such, nor is there so much as an insinuation from Powers to connect Mr. Mills with it, or, if necessary to mention it, Mr. James B. Smith. And for the period from 1904 to 1908, at Folsom Street, where the defendant Mayer was "mainly" occupied, even Powers will not say that anything of the kind ever took place. We hear no more of this circumstance until January 13, 1913, a single, sporadic incident, and for this we have again the testimony of Powers and of one of Tidwell's men, named John W. Smith. The "Americano", a foreign

ship, with her ship's clerk in the scales house along with the government weigher and Mr. Mayer, was discharging at Folsom Street. Powers says:

"In January, 1913, I witnessed the discharging of the 'Americano', with two government officials, at Folsom Street Dock No. 2. The 'Americano' is now sunk, and I don't know whom she belonged to at that time that she was carrying coal for the Western Fuel Company. The government weigher who was present taking the weights was Mr. Phelan. Mr. John W. Smith accompanied me on that occasion, he was a government official" (p. 710).

Powers does not pretend that they went up on the bunkers on this occasion, or ever left the dock.

"We stood around the dock," he says, "from about half past 11 until about half past 1 o'clock. Mr. Phelan went for his lunch *about five minutes to twelve o'clock*, and he returned *a few minutes after 1*. In his absence, Mr. Smith and I observed that at *about five minutes to twelve* four cars were loaded out of the hopper, run up to the scales, *and then* run back again and dumped, without being weighed. *I do not know who had charge of the cars*. The weigher on the dock at that time was Mayer. He *must* have seen the incident that I have mentioned, he was present, *because I saw him come downstairs afterwards*. *After being dumped*, these four cars *were loaded up again under the hopper*, and *when* Mr. Phelan came back from lunch the *new* load of coal was run up to the scales and weighed" (pp. 710-711).

It appears from this, that Mr. Phelan, the government weigher, went for his lunch "about five minutes to twelve o'clock," when the power was on, and that, at this very time at about five min-

utes to twelve, certain operations were begun, proceeded with and completed, during these five minutes to twelve, for it was all "in his absence", namely: "*Four cars were loaded out of the hopper, run up to the scales, and then run back again, and dumped.*" There was no time for such business, even if Phelan left before 12 o'clock, "*about five minutes to twelve o'clock.*" But that is not all, for Powers says further that after being dumped, those four cars moved from the bunkers into which they had been dumped, back again to the hoppers from which they had been loaded, and those four cars were loaded up again under the hopper—"after being dumped, those four cars were loaded up again under the hopper, and *when* Mr. Phelan came back from lunch, the *new* load of coal was run up to the scales and weighed". But the electricity, of which Powers knew so little, had been shut off at the power house at 12 o'clock, and it was impracticable to begin, pursue and consummate these operations, in Phelan's absence, and between the time when he left the bunkers and the time when the current was shut off at the power house. The story is inherently and palpably improbable.

On cross-examination Powers says:

"We took our station on the south side of Folsom No. 2, out of sight of that wharf, *at the end of Harrison Street.* We were on the wharf, right at the bulkhead, over by the dock *on Harrison Street.* That would be the land-

ward end of the dock. We stood behind a kind of shed. No one was with me except Mr. Smith. We remained *there* until a little *after* 12 o'clock, and then we shifted our position to the other side, that is to the north side of Folsom No. 2. We stood behind a place where the *Transport Dock* used to be. We were on *a level with the dock*. Whether the electricity is operating in the third rail during the noon hour, or not, *I do not know*" (pp. 812-813).

He says further:

"I went down to Folsom Street about three times to make such observations during January, 1913. It was always in the day time, I did not go there in the night time. On one such occasion we located ourselves on the top of a roof about a block off. It was the roof of a new building they were putting up on East Street. Mr. John W. Smith was with me on that occasion. Mr. Enlow was also with me on one occasion. Our purpose in going down there was to see the working of the cars, to see what they were doing at noon hours, and to see how they dumped the coal. *The only train that I saw moved during the noon hour* was the one I have mentioned consisting of four cars, in connection with the discharge of the 'Americano' (p. 813).

Again he says:

"I suppose that two or three ships were unloading at the various times that we were down there. In other words, we watched the unloading of two or three different ships. It takes about four days to unload a vessel. We only went down once during the discharge of a single vessel. It might have been a month or two before the discharge of the 'Americano'

if that was in January, 1913, that I first went down there. I have no recollection whether the occasion on which I went down there before the discharge of the 'Americano' was in December, November or October, 1912. I cannot fix the date. The first occasion when I went down there may have been two or three months before the discharge of the 'Americano'; I am not sure. It is a fact that at different times over a period of two or three months, whether there were two or three occasions or more than that, I went down there with those customs agents *for the purpose of secret observation* of the operations of these bunkers. *Outside of the car that I claim to have been moved during the noon hour, during the discharge of the 'Americano', I observed nothing else down there"* (pp. 816-817).

Something more from Powers:

"On those occasions, when I made observations at Folsom Street, I watched the hoppers. I did not see any coal poured out of the hoppers into the bunkers below. We went down there to see if in any way the government was being defrauded, and the complaint of the pouring of coal out of the hoppers directly into the bunkers would be one thing we were looking out for" (p. 814).

And further:

"If they had wanted to put coal in the in-shore bunker during the absence of the customs officer, they could have raised the chute and shoveled the coal down in—it would not have been necessary to put it in the cars at all, they could have let it run from the hoppers" (p. 815).

John W. Smith, one of Tidwell's men (p. 1001), Powers' companion in the "Americano" incident, had been "keeping tab" on the Folsom Street dock for five months, from September, 1912, to February, 1913, with the "Americano" transaction as the solitary result and instance.

"My recollection is," he says, "that the first time I visited the Folsom Street bunkers was in November, 1912; possibly I went as early as September of that year. I went *a great many times* in any event. I went there *when ships were discharging*. I cannot remember the names of any of the ships. I think the 'Dunsmuir' was one though. I cannot remember the number of times I went there *between September, 1912, and the first of February, 1913*.

Q. Is it not a fact, Mr. Smith, that from the 1st of September, 1912, until the 1st of February, 1913, you were keeping tab, so to speak, for the purpose of knowing what ships were discharging at the Folsom Street dock?

A. Well, I don't remember the dates; I only know that *I was keeping track of it*, but I cannot give you the date.

Q. From some time in 1912, which you have heretofore said, as I understood you, to have been probably a month before November, until the 1st of February, 1913, you were making it your business, were you not, to keep track of the ships which discharged coal at the Folsom Street dock?

A. Well, *whenever I was instructed to go there I always went*.

Q. Were you not keeping track so as to advise yourself of the ships that were discharging at that dock during that time?

A. No, *I was not keeping track of it*. (Cf. two answers back.)

Q. But you did *frequently go there* between those periods?

A. Yes sir.

Q. And you always went when a ship was discharging, as I understand you?

A. I cannot say that I always went.

Q. Did you go at times when ships were not discharging?

A. I have been there, but I did not stay there any length of time.

Q. Is it not a fact, Mr. Smith, *that the purpose of your visit was to observe the method and the manner of discharging coal there?*

A. Yes.

Q. That having been the object of your visit there, Mr. Smith, can you not tell us whether or not you did go there when ships were discharging, and whether you went when ships were not discharging?

A. I went *when ships were discharging*; I don't remember of being there very much when they were not" (pp. 1012-1013).

Smith says that on the occasion in question, the government weigher, Mr. Thelen (Phelan) left the dock "shortly after 11:30"; and that the men "appeared to stop work at that time" (p. 1007). Powers, it will be remembered, says that Mr. Phelan "went for his lunch about five minutes to twelve o'clock" (p. 710). If Phelan left at 11:30, and the men stopped work, it could only be because the ship was discharged, and if she had been discharged at 11:30 of January 13th, her discharge would be of record, and Mr. Phelan, a government official, could have been called to prove the fact, and to prove any other relevant circumstance, but

the government failed to call him or to account for the failure.

Smith goes on to say that it was not until

“shortly before twelve o’clock that the cars were thus filled—I could not see very well the discharge of the coal into the cars, I could hear it going into them, however; *after* the cars were *loaded* I could see them and their movement; that is, *I could see the coal* on top of the cars, and see the cars run out past the scales *without stopping*” (p. 1007).

The cars were not switched back to the bunkers and dumped, he makes that later, but were left to the west of the scales, about the middle of the tramway (p. 1007).

Smith was not on the bunker at all that day (p. 1014). He is not good on judging distances, but he was about opposite the other dock (Harrison), it may have been a hundred and fifty feet away, and the bunkers at Folsom Street are about 40 feet high, above the dock level (pp. 1014, 1015, 1016). There is a bulkhead along the sides of the bunkers, “I guess four feet or so” high, “maybe a foot” short of the top of the loaded car—the coal being high enough above the railing to see it, but he “cannot give any notion in feet or inches” (p. 1015). He was 40 or 50 feet westerly from the water, and the scales house, 150 feet away, was on a line with the water (p. 1017). He is unable to state whether there was anyone in the scales house at the time (p. 1019). After Mr. Phelan

left, and before the train of cars moved towards the scales, it was *first loaded* at the hoppers (p. 1019); and this was “*shortly before 12 o’clock* that the cars were thus *filled*” (p. 1007). There is a structure immediately to the south of the scales platform on the southerly track; he could not see through the structure, but “*my recollection* is that I could” see the train load every fraction of the time—“I *don’t think* that structure is as wide as the train is long” (p. 1021). The scales platform is immediately in front of this structure (p. 1024), “but I could always see a *portion* of the cars when they were being weighed, I kept in that position” (p. 1024); but he will not be certain even as to this. He is asked:

“Q. I am asking you if at a distance 150 feet, and at an elevation 35 feet more than the ore train was, you still say you could see that ore train for every fraction of a second from the time it started to move until it halted over the street?

A. I could see it from the distance where I was” (p. 1022).

Now, then:

“Q. What *portion* of it could you see?

A. I *think* I could see the top of it all the way; I *am not absolutely certain of that*, I could see the train moving along” (p. 1020).

And according to this witness himself, “it does not take more than a quarter of a minute to weigh a train-load of coal” (p. 1020). Indeed, it is almost instantaneous (pp. 2142-3).

But this is not all from Smith. He testifies:

“After the cars reached the center of the tramway, they remained there until about *ten or fifteen minutes before 1 o'clock; then they were run back again and dumped into the bunkers*” (p. 1008).

We know, now, as one of the incontestable things in the case, that this statement is inherently improbable, that the thing was not physically possible; for, at ten or fifteen minutes before one o'clock, the power had not been turned on at the power house, there was no current at the bunkers, and the cars could not have been run back and dumped. And Smith clinches the falsehood. He goes on to say: “Mr. Thelen was not there during any of this time. I was present when he returned, which was maybe ten minutes or so after the cars were dumped” (p. 1008). But Thelen, or Phelan, got back there at 1 o'clock—that was his hour—and at ten minutes to one there was no electricity at the bunkers to run those cars.

This is the one incident, turning on a quarter of a minute as the maximum time, and under limitations of distance and relative position and obstructions, to which Smith testifies, of which he is not “absolutely certain”, as the result of five months of espionage. He does not mention the defendant Mayer, (Mayer’s testimony, “Americano”, p. 1996) he was not able to say whether there was anybody in the scale house, and there is no pretense that Mr. Mills, not to speak of Mr. James B. Smith, ever

knew or heard of the matter until the trial of the case below.

We have now reviewed with painstaking care, such evidence as there is in the transcript, pointing in any way to the smuggling of imported coal into the bunkers of the Western Fuel Company. We have done this, regardless of the indictment, regardless of the specific conspiracy therein alleged, regardless of the proposition that it does not proceed upon a conspiracy to smuggle. We have done this for the sake and exoneration of these defendants, to put them right with the court, and to advise the court that there is no evidence in this case, worthy the name, of any deliberate wrongdoing—no evidence of any kind good, bad or indifferent, of a conspiracy by these defendants—in respect to the importation of coal at the docks of the Western Fuel Company. It is not strange that Tidwell himself is brought to say “that in your (his) opinion the coal that went into the offshore bunkers was correctly weighed” (p. 550).

TRANSFER OF COAL FROM THE BARGES.

In a similar spirit, and for the same purpose, we go now to the barges—to the imputation of a conspiracy to misrepresent the quantity of coal, actually transferred from the barges to the Pacific Mail steamships, in fraud of the steamship company, with its sequel of draw-backs collected by that company from the government.

A Pacific Mail liner, the "Manchuria", for example, would take on coal at San Francisco before starting on her voyage to Yokohama. This coal would be delivered by transfer from a barge into the hold of the steamer. The barge would get that coal from the pockets or compartments of the off-shore bunkers, say, at Folsom Street dock. The coal that went, from the importing ships, into those bunkers, had been, as we are now aware, first passed over the scales on the dock, and weighed by the custom-house weigher, and then dumped into the bunkers, and from the bunkers, either at the time or later, it was received into the barge (pp. 878, 2102-3). The scale weight of such coal was checked by Mr. Mayer, as the custom-house officer recorded it, and Mr. Mayer reported that weight to Mr. Mills, and Mr. Mills, in his turn, without any hand himself in the transaction, would copy that report into his blotter (pp. 876, 882, 883). Again when the barge had made delivery of the coal into the "Manchuria", the quantity of delivered coal was reported to Mr. Mills by Mr. Park, the representative of the Pacific Mail Steamship Company in charge of the delivery, and Mr. Mills, once more, as in the first instance, would accept that report and copy it into his blotter (p. 883). This is the Mills' book, the blotter.

Now, year in and year out, for eight years, Mr. Mills keeps this blotter, and it appears from the blotter that there was an overage of something less

than 5% in the deliveries out of the barges, 4.88 per cent it is said in one place to be, and finally 4.99 per cent. It was attributable, in large degree, to the method of handling between the barge and the steamship—a method, sanctioned by government regulations, which left most of the coal without being weighed at all, to be estimated on a comparison between unweighed buckets and some occasional buckets that were selected by the custom-house officer for weighing. The government regulation, regardful of the rough commodity and of the expedition with which it had to be handled, was satisfied with approximate results—with the weighing of one bucket in 50; and in the case at bar, it appears that the practice in San Francisco was to weigh one bucket in 15. It was the inevitable human nature of it, that a selected bucket, filled for weighing during the required halt in the operations, would be better filled than the unweighed bucket which the shovelers were hard put to fill in quick succession, in order “to meet the hook”—and the government’s testimony confesses this (pp. 940-941). An explanation is at once afforded of the disparity, under 5%, between the received weight into the barge, set down in the Mills’ blotter, and the quantity of coal, weighed and unweighed, delivered out of the barge, and calculated according to the government regulation. But the prosecution in this case, seized upon that disparity at the trial, and undertook to tag it as a fraud. There was a conspiracy, it was alleged, to which these defend-

ants, Mr. Mayer and Mr. Mills, and Mr. J. B. Smith himself, were said to be parties, to underfill the unweighed buckets, and then pretend to the steamship company, represented all the time by its officer, Mr. Park it was, and incidentally pretend to the government represented all the time by the custom-house weigher who oversaw every bucket and selected the buckets to be weighed, that the underfilled buckets contained as much coal to the pound as the weighed buckets. It is worthy of remark in passing that the Pacific Mail Steamship Company, which stood to lose, by the alleged fraud, something like \$300,000 (p. 497), where the government's loss in draw-backs would have been about \$7000 (p. 491), has never felt called upon—nor, for the matter of that, has the smaller purchaser, the Japanese Steamship Company,—to impute any fraudulent conduct or any false representations to anybody connected with the transaction, or to question its fairness (p. 459). The material thing in the Mills' blotter was the coal that was delivered out of the barge and into the steamship—the coal that was ascertained by the government weigher, who was in charge of the operation, that was checked from the record of the government weigher by the steamship company's representative, Mr. Park, reported by Park to Mills, and copied by Mills into his blotter; for that was the quantity upon which the bills for coal of the Fuel Company were made out, and rendered to the steamship company, and collected

and paid. There was no particular reason for a nice accuracy and a mathematical exactness, in the Mills' blotter, as to the coal that was received into the barge, in the first instance, from the bunkers; for every pound of that coal had already passed the custom-house, and the duty was paid on the custom-house weights. It was upon the coal, as afterwards ascertained by the government weigher, and checked by Mr. Park, when the barge had been towed over to the steamship's side, and had delivered, out of her hold, the coal into the steamship, that the Pacific Mail Steamship Company paid its bills and collected the draw-backs. It was enough for Mills, so far as concerned the coal received by the barges from the bunker, that his blotter kept him sufficiently well posted as to the quantity of coal on this, that, or the other barge, so that he knew what barge he could avail himself of, and how far, when it became necessary to coal a given ship.

To illustrate: the steamship company purchased and used, not lump coal and that alone, but "average" coal, that is to say, coal mixed with screenings; it did so of purpose and advisedly, and it paid less accordingly. Thirty-five per cent of this steam coal was made up of screenings. In thus "averaging" the coal, screenings would be introduced into the bunkers, passing thence into the barges; and as often as six or seven times a year, or more frequently, when

ships were discharging, and it was undesirable to disturb the operation of weighing the discharged coal upon the scales in the usual "merry-go-round", screenings would be conveyed into the bunkers without being weighed. This implied no loss to the government, for those screenings had come from coal previously imported and weighed, and acquitted by payment of its duty, and then, for the first time, screened, and the separated screenings were stored in the screening bin. From this bin, when the occasion arose, they were elevated on a belt to the bunkers, and conveyed into the barge. By the weight of these screenings, the quantity of coal delivered out of the barge later into the steamship would be increased, and would be a part of the overage; but no deduction from the overage on that account would appear in the Mills' blotter, because the screenings had not been weighed, and there was no report, consequently, of their weight for Mills to copy into his blotter.

Again, at times, coal would be taken from the yard over to the bunkers, and there deposited without being weighed, and here, as in the case of the screenings, no account of that coal would be taken in the Mills' blotter.

Again, at times, only part of the coal in one of these pockets would be taken away by a small steam schooner, and the weight would be estimated to the schooner,—it would not be practicable to get that fractional part of the pocket out of the

pocket and up on the track and over to the scales and back to the pocket, and then into the steam schooner—the situation would be no better at the end than at the beginning. As a result, the part of the pocket went from the pocket into the schooner, as through a chute, on an estimated weight. And when the rest of that pocket was taken over by a barge, its weight, as reported to Mills, would be simply estimated, or no account would be taken of it at all (p. 2001).

Again, in analogy to the case instanced of the steam schooner, coal would, on occasion, be taken from one of these pockets and dropped down to the wharf below for sacking and local deliveries, and the weight of what was left in the pocket would be made, if at all, on an estimate.

Again, the weight of all coal that was discharged from a ship, passed over the scales, and then dumped into the pockets, was on a rising beam—this has been repeatedly referred to. But the coal that was delivered out of the barge at the ship's side, was coal sold to a customer, and the barge-delivered coal, as in the case of any customer, and as the fact was in respect to the weighed buckets on the barge, was ascertained on an even beam (p. 1535).

Again, Mills, on a given day, would enter a charge in his blotter against a particular barge, say, of 900 tons, the quantity reported to him; the barge would make delivery of a part of this,

500 tons, to some vessel in the stream. This would leave the barge with 400 tons. She goes back to the bunkers next day, and replenishes with 400 tons more, and Mills, on report to him, charges the 400 tons to the barge, as he had charged the 900. The barge, now with 800 tons in her hold, makes a delivery in the stream of some 600 tons. This leaves the barge with 200 tons. She gets another replenishment, say of 600 tons, Mills again charges it, and she makes another delivery, perhaps, of 700 tons. This leaves her with 100 tons, as a charge against her. But Mills did not continuously carry along these two sets of figures, charges and deliveries, in his limited blotter. In the case supposed, he would total up the charges of 900, 400, and 600, making 1900; and he would total up the deliveries of 500, 600, and 700, making 1800: this would leave a charge against the barge of 100 tons, and Mills would start anew, in his blotter, with the 100 tons as coal received into the barge, dropping all reference to the former receipts. An overage attributed to that barge, on the basis of 100 tons only, as having been received, would be manifestly incorrect, and disregardful of the quantities of coal which the barge had previously taken on. This was a source of error in the blotter, and it led Mr. Tidwell into attributing percentages of overage to particular barges which he felt himself compelled to admit were excessive. For example, Tidwell attributes a 10% overage to the barge "Comanche"

in 1908 (pp. 581-2). He figured this percentage on Mr. Mills' book, as showing the receipt of 1131 tons into the barge, and an overage, on delivery, of 111 tons (p. 582). "We did not figure up all of Mr. Mills' books to see whether he made any errors or not, we simply used his totals" (p. 583). But there was an error in the figuring, and it arose from the circumstance that Mr. Mills, as we have heretofore illustrated, instead of carrying forward his totals, started anew with the balance left in the barge (p. 583). But when Tidwell was asked to say whether the total received by this barge, instead of being 1131 tons was 3666 tons, he said: "I could not answer it at all, because I don't know" (p. 585), (p. 586). Similarly, Tidwell attributed an overage of 22.6 per cent to the "Melrose", one of these barges, as of January-April, 1909 (p. 587), on the basis, taken from the Mills blotter, of some 881 tons as having been received into the barge; whereas in point of fact, as Tidwell admits, when previous totals, which Mills had dropped, are reckoned with, the barge appears to have received, in respect to the deliveries in question, 2400 tons of coal, and Tidwell confesses that his percentage of overrun was incorrect (pp. 587-594, 594). Once more, on a charge made in the Mills blotter to the "Comanche", in 1909, of 750 tons, and a delivery from the barge, taken from the same blotter, of 858 tons, Tidwell attributes to this barge an overage of 14% (p. 594); but when his attention

was called to the dropping of totals by Mills, in respect to coal received into the barge, he admits a total of 2509 tons as having been received, and scales down his percentage of overage from 14.43 per cent to 4.3 per cent (pp. 594-8, 598). Similarly, Tidwell attributes to the "Melrose" an overrun of 24% in 1911, on 878 tons discharged, as against 706 tons received, all from the Mills blotter (pp. 598-9), and upon going back to the dropped totals in the blotter, he admits a receipt into the barge, total receipt, of 3613 tons, with an overage in deliveries of 172 tons; or a scaling down of his attributed percentage from 24% to 4.74% (pp. 598-606, 606, 609). Similarly, in the case of the "Theobold", the percentage comes down from 13% to about 4% (pp. 614-620). And again, in the case of the "Melrose", in 1911, the percentage is brought down from 3.46 per cent, to 1.4 per cent (pp. 620-623). Indeed, there is a reduction of one percentage of overrun from 70% down to 21%. Tidwell says:

"In answer to the question put to me by counsel for the government, I gave the percentage of overages on the barge deliveries. Among those percentages was one of 70 per cent, which I afterward reduced to 21 per cent. The figure 70 per cent was incorrect, in so far as Mr. Mills' books were concerned. My statement was correct; Mr. Mills' books were incorrect in that particular instance. Whether Mr. Mills' books were incorrect in every other case where I gave a percentage, I could not answer. I should say that the total out-turn was incorrect. I did not check up the other percentages which

I have given by going over the records and checking up from the first time a ton of coal was placed in a barge up to the very end, as I did yesterday. There is no other way of getting at the percentage of overage except as shown by the record and by Mr. Mills. I assumed that the figures of Mr. Mills in the books were correct, and I acted accordingly. In the case of the 70 per cent overage I found that these figures were incorrect, and I made the correction. I did not check the figures up in the other cases to find whether they were correct or incorrect'' (pp. 573-574).

Again, while the conditions of delivery out of the barges and into the steamships, regard being had to the circumstance that 56 buckets out of 60 would not be weighed at all, made inherently for an overage, and that would be the normal and the expected thing, as in fact it was, nevertheless these blotters of Mr. Mills for every year of the nine years, 1904-1912, show the existence of underages as well. In 1904, there is an underage in excess of 68 tons; in 1905, in excess of 33 tons; in 1906, in excess of 140 tons; in 1907, in excess of 89 tons; in 1908, in excess of 169 tons; in 1909, in excess of 128 tons; in 1910, in excess of 78 tons; in 1911, in excess of 333 tons, practically 334 tons; and in 1912, in excess of 27 tons (p. 1982). These shortages, or under-runs, or underages, as they are variously termed, were not taken into account by Tidwell in figuring the percentage of overage which he attributed to the barges (pp. 574, 577-8).

The Mills books, then, were mere blotters, liable, however innocently, to mislead in respect to the overages of any particular barge, inexact, and approximate only in expressing the quantity of coal received in the first instance into the barges. If one of these blotters, for instance, charged 1000 tons as received into the barge, and 1050 tons as delivered out of the barge into the "Manchuria", there would be an apparent overage of 50 tons—50 tons more to the steamship than the blotter indicated as being contained in the barge. But if the elements of inexactness in the blotter had been repaired, if omitted quantities, screenings and otherwise had been supplied, if the difference between the rising beam at the dock, and the even beam at the ship's side had been reckoned with, it is clear that the Mills blotter would have shown something more than 1000 tons as having gone into the barge; and the apparent overage of 50 tons would have been diminished by just that something more. Mills, however, as we have suggested, was not specially concerned with precision of statement in his blotter as to the quantity of coal received into the barges; he was satisfied to know, generally, to what extent the barges were furnished to fulfill coaling orders; the custom-house had already passed upon the coal that was received into the barges, whether Mills knew its weight or not, and the custom-house had been settled with;—it was upon the quantity of coal delivered out of the barge, at the ship's side, as ascertained by the customs weigher and by Mr.

Park, that the Western Fuel Company rendered its bills and the Pacific Mail Steamship Company paid them. That was the material thing.

Mr. J. B. Smith speaks to this point:

“Mr. Mills, as well as all the other employees, send reports to my office. I receive reports from every department of the business. From six to eight such reports are turned into my office every day. I do not necessarily look at Mr. Mills’ reports daily. I know that they are there if I wish to refer to them at any time. I have certainly, in looking at them, observed overruns in connection with the barges. The overruns showed upon those reports certainly did not excite any surprise or suspicion in my mind, because, when we first commenced the business of the Western Fuel Company, Mr. Mills explained the method in which they handled the coal in the barge department. I also knew that the weights going into the barges were not accurate. I knew that the barges were merely floating vessels used for the storage of coal and, therefore, we were not particularly interested in keeping accurate weights of the coal laden upon the barges. *All we desired was the approximate weights, because we knew that finally the coal in the barges would find a weight in connection with its discharge.* It could not really have made any particular difference to us whether the coal was weighed at all when it went into the barges. All that coal was the property of the Western Fuel Company. Nobody else had any interest in it. It was not any more important to us to have accurate weights of that coal than it would be to have accurate weights of the coal in a particular bunker or yard belonging to the corporation. *The only thing, therefore, that really indicated the over-*

run to me was the annual stock-taking account''
(pp. 2160-1).

Again, he says:

"I never in my life examined the so-called 'Mills' dock books or diaries' covering the years 1906 to 1912. In answer to the question whether it is possible I never looked at those books at all to ascertain the overage or the shortage, or the quantity of coal charged up against a barge, etc., I would say that, as I explained in my direct examination, *we were not interested and I was not interested in the quantity of coal that went into the barges; all that I cared about was the final weight that was charged against the vessels or people that were receiving coal from our barges.* The barges were simply floating store-ships with scales adjusted on them to ascertain *the delivered weight* the same as the platform scales down on the street to ascertain the quantity of coal delivered out from the yard. I suppose I knew Mr. Mills was keeping those books, because they were there on his desk, but I never examined into their contents nor was I interested in their contents. They were his own method of keeping account down there to his own satisfaction. As manager, I was, of course, interested in the manner in which every department was run, but it was not necessary for me to, and I did not, ask Mr. Mills why he made entries in those books. *His purpose, as I understood it, was only to keep a general idea of the amount of floating storage we had so as to be able to know from day to day what position we were in to meet the requirements of steamers calling for coal''* (pp. 2199-2200).

Now, then, when this coal was ascertained and checked by the government weigher and Mr. Park,

they were in command of the situation, not the Western Fuel Company. The government weigher was there to ascertain the quantities of coal in the interest of the draw-back which the government had to pay; Mr. Park was there in the much more considerable interest of the Pacific Mail Steamship Company, to see to it that the steamship company got all that it bargained and paid for. The government regulations, made by the government itself to accommodate the proceedings of the custom-house to the exigencies of a rough commodity quickly handled, called for the actual weighing upon the scales of but one bucket in fifty. At this port, the requirement of the government was exceeded; four buckets in sixty, or one in every fifteen, were weighed. Who picked out the buckets that were to be weighed? The government weigher; and at his side, overlooking the transaction, was Mr. Park for the purchaser of the coal, the steamship company. Is it consistent with a rational view of the transaction, that the government weigher, and, in addition, the steamship company's representative as well, countenanced a delivery of unweighed buckets, so under-filled in comparison with the buckets which they selected for weighing, as to manifest a systematic spoliation of the steamship company, a conspiracy to withhold from it the goods it purchased and was paying for, and, concurrently, to defraud the government of the incidental draw-backs?

What is the testimony, fairly reviewed as to its substantial character, touching the delivery of this coal under the eyes of the government weigher and the steamship representative?

Whether the unweighed buckets had the same quantity of coal in them as the buckets that were actually weighed on the scales, is, for all the witnesses, a matter of comparison and estimate; and, as was to be expected, the estimates are that the weighed buckets, filled during a suspension of operations, and with relative latitude of time, would have somewhat more coal than the unweighed buckets, filled under the stress of rapid hoisting, when the men were hard put to it to "meet the hook". Take David Powers, with whom the government begins its testimony on this point. There were four tubs, he tells us, in the hold of each barge, numbered 1, 2, 3 and 4, hoisted by an engine, and going up in rotation with two men to each tub—going up sometimes as fast as a hundred and twenty tubs an hour, with a net weight to each tub of 1100 or 1120 pounds (p. 688). These tubs, says Powers, speaking of the unweighed tubs, and in terms of estimate, "would go up about three-quarters full, and when they were being weighed they would be heaping full" (p. 688). It was the custom, he says, to take the weight of four buckets at a time, a round of buckets, and this operation would occupy from ten to fifteen minutes. Each tub would be weighed separately, one after the other.

"The difference between the method pursued in taking coal out of the hold when a round of tubs was being weighed, and the method pursued in hoisting the tubs and discharging their contents into the boat, was, that when the buckets were being discharged into the steamer, they were going up *about* $\frac{3}{4}$ full, and there were about 120 tubs an hour, *that is, about two a minute, or 1120 pounds net weight.* I should judge that it took ten or perhaps fifteen minutes to weigh the four tubs, one after the other; when the first tub of a round of tubs was being weighed, *the remaining three tubs would be down in the hold much longer than they would have remained there if weights were not being taken*" (pp. 691-2).

Powers says, again, that when the government weigher wanted a weight, he would tell the defendant Edward J. Smith, who was there for the Western Fuel Company, and Edward J. Smith would call out: "On the scales" (p. 700). This is the defendant, Edward J. Smith, who was acquitted. When Edward J. Smith would thus call for buckets to go on the scales,

"I could see", David Powers continues, "the tubs of coal before they would be hoisted to the scales when a weight was desired and also the tubs to be hoisted when no weights were being taken. I could also see the shovelers down in the hold of the barge. When the tubs were coming up and being discharged into the steamer without being weighed they were about three-quarters full; but when they were being placed on the scales they would be heaping up, and this would occur in the presence of the defendant, E. J. Smith" (p. 700).

Again, he says:

“The situation at nighttime was much the same as that at daytime with reference to the discrepancy existing between the tubs that were and the tubs that were not weighed upon the barges. Sometimes the coal would come up three or four or five lumps in the tub, at other times the tubs would be *three-quarters full, or a little more full*” (p. 706).

In detailing a visit to the mail steamer “Korea”, on December 18, 1911 (1912), in company with two customs agents, John W. Smith and E. P. Enlow, at a time when Powers had been hired into the government service by Tidwell, a visit of espionage, Powers brings out the circumstance that if the unweighed buckets are not sufficiently filled, they will not trip at the bumper of the hoist, and discharge their contents into the steamship. This visit was made at night—the three visitors were there all night. “When the tubs”, says Powers, “were being weighed, they were overloaded, heaping full, and when they were not weighed, they went up very light”. He then adds, significantly: “Sometimes, indeed, they had to send the tubs back to put *more coal* in them, because they did not contain enough coal *to trip at the bumper*” (p. 709). Edward J. Smith, who was acquitted, is the defendant named by Powers as being present on this occasion.

There was no difference, according to Powers, between the comparative contents of the unweighed buckets and the weighed buckets, in 1902, when the

business belonged to John Rosenfeld Sons, before the Western Fuel Company came into existence—the weighed buckets would be filled up to overflowing,—he never says that they overflowed—while the other buckets were three-quarters full (p. 737). The short of this is, that in the business of transferring coal from barge to steamer, under the circumstances as they existed, a normal disparity between the buckets was to be expected and actually occurred. He says further:

“The checkers’ duties on the barge are to see that the tubs are full, and that they take weights once in every fifteen tubs, or 60 tubs. It is not the checker, but the United States government weigher, who has the authority to say when a tub shall be weighed, and if the tub be filled to overflowing, he has the right and privilege to say, ‘we shall not weigh this’, he can accept or reject any tubs that he pleases” (p. 747-8).

As an agent in the government’s pay, Powers made another visit to the “Korea”, on this occasion in the daytime. “On said latter occasion,” he says, “the buckets were going up fairly well filled, even when they were not being weighed; they seemed to be taking the weights very well in that case.” He refers again to his visit at night to the “Korea”, on which occasion, as we have noted, he had said that the buckets when unweighed, went up “very light”. Referring again to the same occasion, instead of saying “very light”, he says: “very badly”. “On that occasion,” he says, “the tubs were going

up very badly.” But the next sentence gives us something in the way of fact, by which to take the measure of Mr. Powers’ “very light”, or “very badly”; for Powers proceeds to say: “The buckets were only three-quarter filled, *or a little over.*” When the men, then, were working at night, and the tubs “were going up very badly”, those unweighed tubs, on the admission of such a witness as Powers, and at a time when he was spying for hire, were *over* three-quarters full (p. 818).

He adds that when a barge is coaling a ship, there is an inspector, over and above the government weigher—two inspectors, one on each side of the ship, and at times the inspector goes down into the barge itself, and sits there when the barge is coaling the ship (p. 830).

Powers acted as hatch-tender on the barge, 1904-1908, very seldom; and only at intervals for a year or so, between 1908 and 1911 (pp. 739, 699). It was the hatch-tender who would lay off the shovelers, and the reason was because such men were not able to do their work fast enough, “to fill the loads sufficiently” (pp. 839-840). In other words, a man had “to meet the hook”, or he could not hold his job.

Powers nowhere pretends that Mr. Mills instructed him, or anybody else, to tell shovelers to under-fill buckets, and he says that he never told anything of that kind himself to the shovelers while he was working for the Western Fuel Company (p. 834); nor does he in any way connect Mr. Mayer

with the transfer of the coal from the barges. The name of Mr. James B. Smith is not mentioned by him in this connection.

This is the pith and substance of the testimony of David Powers—the David Powers who was willing to do anything if Tidwell gave him a job: “I told him I would do anything, I would be willing to do anything” (p. 845).

Edward Powers had been employed on the barges for several years—up to July, 1907, when he began as assistant to Mr. Mills (p. 860). His testimony goes to his experience on the barges up to the time that he left them to go to Mr. Mills as assistant. Two years of the time was before the fire of 1906, when he acted first as a dumper, tipping the tubs, and occasionally as hatch-tender, getting his orders from the regular hatch-tender (pp. 855, 857). For six and half years after the fire, “I continued to attend to the hatch exclusively upon these barges” (p. 860). The government weigher would be on the barge, either seated there or walking up and down; Powers, in all the time, never saw him in the cabin (p. 859). When particular tubs were weighed, “there would be a sort of cessation in the hoisting” (p. 861). It took from three to five minutes to weigh each tub (p. 861). “The time which the men would have to load the tubs remaining in the hold would be increased by the time which it took to weigh the tubs, which would be considerable” (p. 861).

Powers is asked:

“Q. To what extent, if I may use the expression, were these tubs filled during that period of time when they were put upon the scales to be weighed?

A. They were filled.

Q. You say they were filled; to what extent were they filled?

A. That is the only way I can explain it, they were filled” (p. 861).

He is asked whether the tubs were filled “by being just level with the top, or whether they were filled to overflowing”—the weighed tubs being evidently intended; and he answers: “Sometimes they were filled to overflowing” (p. 861); and he makes the point clear by adding: “sometimes they would put in more when they were weighed:”—(p. 862) it frequently happened. He then gives this testimony:

“Q. During that same period of time to what extent were the tubs ordinarily filled with coal which in fact were not weighed?

A. They were pretty well filled.

Q. You say they were pretty well filled; what do you mean by saying they were pretty well filled?

A. There was not much difference between them and the tubs that were weighed.

Q. You say there was not much difference; what difference was there?

A. There might be a few shovelfuls difference.

Q. Did you ever notice any difference between these tubs more than a few shovels full?

A. Yes, sir, I did.

Q. Upon how many occasions did you notice that?

A. When the customs man made me take it off the top, made me scrape the top off.

Q. How frequently did that occur?

A. Several times.

Q. What has been the situation there with reference to the occasions that occurred during the time you were hatch-tender, when buckets would be filled to overflowing when weighed and not filled when not weighed?

A. They were filled to suit the custom weigher. If he objected they scraped the top off of them and they were told not to do it again.

Q. That is not the question I asked of you. You have testified that the tubs that were weighed were well filled; is it not true that you have frequently during that time that you were hatch-tender seen buckets that were weighed filled to their uttermost and buckets that were not weighed filled to such an extent only that the coal sometimes would not reach the tops of the tubs; is not that true?

A. Once in a great while, yes, sir.

Q. Did not that frequently occur?

A. No, not so that you could not see the top. They were always pretty well filled" (pp. 862-3).

Speaking from his long experience as hatch-tender, Powers does not think it possible "for a person who is on the deck of the barge and removed some distance from the hatch-way, to see the contents of the tubs as they would rise at night" (p. 865). It will be remembered, though not specially important, that part of David Powers' spying on the buckets was at night. Edward Powers goes on to say: "During the time that I was hatch-tender, I did not receive any complaint from the engineers

in the employ of the Pacific Mail Steamship Company regarding the shortage of coal, nor did I hear any complaints made by anyone else"; and he says further:

"During the time that I was acting as assistant to Mr. Mills, from July, 1907, to July, 1911, I frequently saw liners being coaled—frequently saw coal being taken out of barges and discharged into these liners, and frequently saw the operation as the result of which the coal was taken out of the barge and dumped into the liners. I saw weights taken during that period of time. There was no difference, so far as the filling of the tubs was concerned, then, as compared with the method of filling said tubs when I was hatch-tender, *and my evidence would be the same so far as the loading of the tubs was concerned, whether they were weighed or not weighed*" (p. 869).

Powers says that he got quite a few complaints from Pacific Mail engineers regarding shortages of coal, while he was acting as assistant to Mills—between July, 1907, and July, 1911—but he adds that the complaints were not always about shortages, sometimes they had reference to the quality of the coal (p. 869). He continues:

"I would say in answer to these complaints that we were selling the coal by weight, and that the United States custom men were weighing it. When I spoke to the defendant Mills about the matter, he would tell me that the United States custom men were weighing the coal. He gave me the same excuse that I was giving the other men, *and it was a true excuse*. The custom weighers were weighing the coal. In answer to the question whether the defendant

Mills ever suggested to me the propriety of telling the men in the hold that they ought not to put any more coal in the tubs that were weighed than in the tubs that were not weighed, I would say that Mr. Mills told me that the chief engineers were always growling,—that it was part of their job to growl. He asked me if I had any trouble with the weighers, and I said no, that they were weighing the coal, and that they were not kicking. *Mr. Mills told me not to have any trouble over there*" (p. 870).

Special effort was made by the government to have this witness say that Mr. Mills had instructed him to have the shovelers under-fill the tubs that were not weighed on the scales, but the effort failed:

"I have no distinct recollection," says Powers, "of his telling me to suggest to the men in the hold that they should not put any more coal into the tubs that were weighed than in the tubs that were not weighed, but he may have told me that, *I don't remember*, that is a long time ago, he may have told me that, *I have forgotten*" (p. 870).

Powers further says, when asked to compare the character of the weighed coal with that of the unweighed coal, "it is about an average" (p. 871); and as to whether the shovelers filled up the weighed bucket with fine coal—put it into the crevices between the lumps—he says: "Well, it was according to where they were working; if the barge was listed to starboard there may be three tubs on one side taking the list out; if she were upright, they would work it out even" (p. 871). He saw fine coal go into the buckets that were weighed, and this would

add to the weight of the lump coal—he testifies, as a discovery of the obvious, “you certainly could put more fine coal into the bucket” (p. 872).

Powers further says that when he was acting as assistant to Mills, he knew the quantity of coal that went into the barges, and the quantity that went out of the barges “*by the reports that were given to me*”; and he never mentioned to Mr. Mills that the blotter showed more coal out of the barge than went in, he never had any discussion with Mills on the subject (p. 874). There were shortages, on occasion, in deliveries out of the barges, as we have heretofore noted; and Powers, when asked if he had ever discussed the barge overages with Mills, gave this answer: “No, except when he ran short, he made a howl, that is all.” The government proceeded to develop the implications of this “howl”, in the following examination:

“Q. How frequently, how often did the barge run short?

A. Two or three times—to my knowledge, a couple of times—two or three times.

Q. Was that the subject matter of any discussion between yourself and the defendant Mills?

A. No.

Q. Well, you say that the defendant Mills would holler if the barge went short. Did you have any trouble with him from the barge going short?

A. No, he just spoke of it, that is all.

Q. You say he just spoke of it; what did he say?

A. That barge ran short; that is all he said.

Q. Did he make any complaint about it running short?

A. I don't remember whether he did or not.

The COURT. Q. What do you mean by 'howl'?

A. Well, 'The barge is running short; what is the matter.' That is all.

Mr. ROCHE. Q. That is, when a barge did run short, he would say, 'What is the matter'?

A. Yes.

Q. Did he say it in the same tone of voice that you said it, or would he say it in a different tone of voice?

A. He would say it in a moderate tone of voice.

Q. Can you recall anything else, any other language used by the defendant Mills, excepting that, in connection with a shortage when it would occur upon a barge?

A. No, I cannot recall any other.

Q. You can't?

A. No" (pp. 875-6).

Powers goes into this matter of the tubs on cross-examination, and, explaining the necessity for the shovelers to hook the buckets to the cable in the rapid operation of hoisting, uses the expression, "meeting the hook". He says.

"Q. Now, what do you call that proposition, what is the term for it?

A. For what?

Q. The scientific term, if you can call it such, for this proposition of meeting that cable that comes down?

A. Meeting the hook.

Q. That is called meeting the hook, is it?

A. Yes.

Q. The matter of meeting the hook is something that keeps the men going at full speed,

or at speed all the while, is it, while the buckets are coming up?

A. For instance, the tub is lowered, and the men, they alternate from one side to the other, he unhooks it and throws it over and the other man has to be there to meet it.

Q. But when these buckets are to be weighed, four of them in a round, there is a little more time in the nature of the work in which to fill up these buckets, according to your testimony?

A. There is" (p. 903).

Again, Powers testifies:

"Q. To what do you attribute the fact, Mr. Powers, if it be a fact, that the tubs that are weighed have some more coal in them than the tubs which are not weighed?

A. *Well, I attribute that to the fact that they have more time to put it in"* (p. 911).

And again:

"Q. At all events, Mr. Powers, what is the general state of affairs there at the time the custom-house man calls for a weight with regard to how many of the tubs are then full?

A. There is generally one full.

Q. There is generally one full, and there may be two full.

A. Yes, and there may be three full.

Q. Is it or is it not a fact then, that one or two or even three sometimes of those tubs are in process of being filled when you call down for the man to come up or when the hatch-tender calls down below for the man to come up and this manœuvre is gone through with it with regard to putting the tub upon the scales?

A. Yes.

Q. And while the custom-house weigher is taking that first weight some of those other tubs at least are still in the process of being filled?

A. Yes, sir.

Q. And is that in part what you have reference to when you say that the stevedores then have more time with regard to the filling of the tubs than when they are engaged in meeting the hook?

A. They certainly have more time, certainly.

Q. And if they keep on working throughout that time the natural result of that operation is, in your opinion, that there will be some more coal in those particular tubs as to which they have more time than would have been the case if there had only been the time allowed them on that tub which was necessary to enable the tub to take its turn in the meeting of the hook?

Mr. ROCHE. We object to that question upon the ground that it calls for the conclusion of the witness.

The COURT. That is the same thing that you have proved yourself, *that when they have more time down there they put more coal in*" (pp. 912-914).

A shovelful of coal, says Powers, would be ten or fifteen pounds, and even a single lump added in the weighed bucket, would make some difference (p. 921).

The significance of the testimony of Edward Powers, as we have quoted it, is deepened by the fact, disclosed by his cross-examination, that he was bitterly hostile to the Western Fuel Company, and to Mr. Mills, whom he blamed for "knocking" him to Mr. J. B. Smith, and for putting him out of his job (pp. 955-6). He did not hesitate to use the

epithet "fraudulent" in respect to the stevedores who filled the buckets, although, as we shall show, he recanted his imputation against them. He was asked:

"Q. Now, then, do you mean to be understood as testifying to this court and jury that there was any *wrongful* action *on the part of those stevedores* in the filling of those buckets, or in the loading of those buckets that were hoisted during the discharge of those barges?

A. I do.

Q. And what is it?

A. Well, for the reason the report was rendered F. C. Mills and J. B. Smith every day, stating that the barges had overrun, sometimes as high as ten, twenty and thirty and as high as thirty-five per cent over what was loaded into the barges, therefore it showed *conclusively* that it was *fraudulent*, didn't it?" (p. 924).

Mr. Powers' "conclusions" and his epithet will not supply the place of facts—we remind the court, now, of what we have been at some pains to point out, that the percentages of overage in the Mills blotter, where totals were frequently dropped, are anything but "conclusive", and that Tidwell was repeatedly forced to scale down his percentages; and we remind the court now, and with emphasis, that for all the years, from first to last, that the barges were discharging into the ships, the percentage of overage, nothing being left out of account, beginning, middle and end, was less than five per cent. But Powers, in his next answer, repeats his imputation against the stevedores, and

while he, himself, was acting as hatch-tender. He is asked:

“Q. Do you claim that they were overloaded intentionally and deliberately, by those stevedores?

A. In some cases, yes.

Q. Was that true, Mr. Powers, while you were acting as hatch tender there?

A. It was” (p. 925).

A little later, he recants. He is being inquired of, concerning a conversation with Mr. McCutchen and Mr. Olney and Mr. Moore.

“Q. Do you remember saying down there that when the buckets were going up without a weight being taken, there was about three-quarters of a minute between buckets?

A. I do.

Q. What else do you remember saying in regard to the manner and the method of the loading and weighing and hoisting of the buckets?

A. I stated it took a minute or three-quarters of a minute to discharge a bucket without weighing it, and that it took from three to four minutes to weigh the buckets.

Q. What, if anything, further, did you say in connection with those circumstances, that it took three-quarters of a minute for the buckets when they were going up, and more time when the buckets were to be weighed?

A. You asked me if it benefited the shovelers in the hold, and I told you it did, *that they had more time to fill tubs.*

Q. You said they had more time to fill tubs?

A. I did.

Q. Do you remember having said *anything* else than that?

A. Not that I recollect.

Q. Can you think a moment, and see whether that is all that you said in regard to that subject?

A. I may have said more, *I don't recollect just now.*

Q. Well, don't you remember whether you did, or not, with respect to the filling of these tubs, or the weighing of these tubs, or the loading of them *by the stevedores*, or as to whether or not there was any *wrong* conduct in it?

A. *I don't recollect* that. I told you that when they went on the scales they were overloaded, and when they went up *without being weighed* they were underloaded.

Q. Do you remember saying anything about the human element?

A. *I said it may be human nature to take advantage of anything, for instance, the three or four minutes it took in weighing, and they were there to meet the hook.*

Q. You do remember, do you not, that you said something about human nature, and about meeting the hook?

A. Yes, sir, I do.

Q. Did you forget that a moment ago, when I asked you about it?

A. I am stating that *I remember it now.*

Q. But, I say, when I asked you the question a moment ago, did you forget about it then?

A. *It did not come to my mind; if it did, I would have answered it.*

Q. Well, what, if anything, did you say in regard to the human nature element, and in regard to taking advantage?

A. *I said the men would shirk the work if they were not forced,—that is to say, if someone was not standing over the hatch telling them to fill the buckets all the time, and if the hatch-tender was not always after them they would not fill the buckets, that is what I told you.*

Q. You remember that, do you?

A. I do.

Q. Do you remember as to whether or not you said there was anything *wrong* done down there?

A. *Not on the part of the shovelers.*

Q. What did you say about that?

A. I said it was only human nature to make the work as light as possible, *speaking of the shovelers in the hold.*

Q. Then speaking of the shovelers in the hold, Mr. Powers, did you use any expression about whether there was anything wrong, did you use that word in regard to that?

A. I may have. *I know there was nothing wrong with the shovelers*" (pp. 938-941).

The foregoing examination, we submit as a revealing instance of forcing the truth from an unwilling witness.

And if there was "nothing wrong with the shovelers", it is clear enough that they had not been instructed to do anything wrong. We are not surprised, then, when Powers in his next breath, makes the following admission:

"Q. Do you recall now as to whether anything was said in the course of that conversation with reference to whether or not anybody had ever given any instructions to you or had ever asked you to do anything wrong?

A. You asked me—one of the gentlemen asked me,—*if J. B. Smith ever told me to overload tubs or underload tubs*, and they asked me *the same question about Mills*, that question was asked.

Q. And what did you say?

A. *I said I received no instructions from them to overload or underload tubs*" (pp. 941-2).

And yet, Mr. Mills—not to speak of Mr. James B. Smith—was indicted by the grand jury on the testimony of Tidwell as the only witness.

Powers speaks again of Mills. In his direct examination by the government's counsel, Powers says:

"In answer to the question whether the defendant Mills ever suggested to me the propriety of telling the men in the hold that they ought not to put any more coal in the tubs that were weighed than in the tubs that were not weighed, I would say that Mr. Mills told me that the chief engineers were always growling, that it was part of their job to growl. He asked me if I had any trouble with the weighers, and I said no, that they were weighing the coal, and that they were not kicking. *Mr. Mills told me not to have any trouble over there*" (p. 970).

On cross-examination Powers again refers to Mills:

"Q. Now, so far as their putting more coal in these buckets is concerned, the stevedores putting more coal into buckets is concerned, at the time the weights are called for, than at other times, *have you ever told the stevedores to do anything of that kind?*

A. I have not.

Q. *Has anybody ever asked you at any time, Mr. Powers, while you were in the employ of the Western Fuel Company, while you were a hatchtender, or while you were an assistant superintendent, has anybody ever asked you or*

instructed you *to tell the stevedores to do anything of that kind*, that is to say, to put more coal into the buckets when a weight was to be taken than when they were going up without weight being taken?

A. Not that I remember of.

Q. Not that you remember of?

A. No.

Q. Don't you think that if anybody had ever said anything of that kind to you, that you would recall it?

A. I think so.

Q. *And do you remember now of any occasion as long as you were connected with that company when anything of that kind was ever said to you?*

A. *I was never told to tell them to underload the tubs, no.*

Q. Were you ever told to tell them to overload the tubs at any time when a weight was to be taken?

A. I was never told to.

Q. Is it not a fact, Mr. Powers, that Mr. Mills used to say, whenever any of these matters would come up, or complaints come up, that he did not want any trouble over there, or not to have any trouble over there?

A. He would say not to have any trouble over there—yes, he said that" (pp. 907-908).

And in respect to one of the hatch-tenders, Dan Pallas, Powers says that several customs-weighers made complaint to him as to overloading the tubs (pp. 908-910). Powers, before reporting the matter to Mr. Mills, told Pallas not to have any trouble with the weigher (p. 910); meaning "to keep the tubs filled when going on the scales as when they were not being weighed" (p. 910). This was some

three or four years ago (p. 909). Powers reported the complaint to Mr. Mills, who, in the presence of the custom-house weigher, instructed the hatch-tender and Powers also, "to keep the tubs even" (p. 908).

And again:

"Q. Do you remember, more than once, Mr. Mills saying he did not want any trouble over there, or with the customs-weighers, or whatever it was he did say?

A. Whenever the customs-weighers started in kicking, or started in objecting to the way they were loading the tubs, and I told Mr. Mills about it, *he would tell me not to have any trouble over there*" (p. 915).

He says further:

"Q. You were assistant superintendent, Mr. Powers, for a matter of four years; do you recall how often you reported things like that to Mr. Mills and *he would say to you he did not want any trouble over there*?

A. *Quite a few times*; I do not remember the exact number of times.

Q. I know—and you could not be expected to remember the exact number of times, but do you remember whether or not Mr. Mills has said that half a dozen different times?

A. *He said that quite often*, and he also said that the weighers were cranky, and they had something or there was something the matter with the weighers; he made that remark, he said they would kick at anything.

Q. Well, whether they were cranky, or not, or they would kick at anything, or not, he used to say he did not want to have any trouble over there?

A. He said that several times, yes, sir.

Q. Do you know whether he said it half a dozen times?

A. I don't remember whether he said it half a dozen times or whether he said it 12 times or three times.

Q. You cannot remember?

A. I cannot remember, no.

Q. And when you would report these matters to him, he would say that, would he not?

A. He said that several times when I reported the matter to him, yes, sir.

Q. Whether the customs-weighers were cranky, or not, they had the absolute right, as you understood it, to say how that weighing should be proceeded with, did they not?

A. So I understood, yes, sir.

Q. And is it or is it not the fact that whatever the customs-weighers said with regard to weighing, the employees were supposed to comply with it?

A. *They were supposed not to have any trouble with them.*

Q. *And if a custom-house weigher claimed that he would not take a certain bucket or tub for weighing, it had to go on up into the ship without being weighed, did it not?*

A. Yes, sir.

Q. And if a custom-house weigher claimed that certain other buckets represented more of an average of the buckets that were coming up *they would be weighed instead of the ones that had first been offered, would they not?*

A. They would" (pp. 915-917).

These complaints, as Powers says, were made to him in the first instance, and by him reported to Mills; for Powers, it was, who was in close touch with the barges, Mr. Mills visiting them only on occasion, perhaps twice during the day:

“I would go out to the mail dock,” says Powers, “or in the stream, or wherever the barges might be working, more often than Mr. Mills; Mr. Mills was there twice a day, or sometimes more, I was a regular or steady hatch-tender, working upon different barges” (p. 923).

Powers volunteers an incidental remark about Mills, which has a significance not appreciated, probably, by Powers when he made it. He refers, without any circumstance or detail of time or transport, to some occasion “on the transport dock—Mr. Mills told me to underload the tubs; on the transport dock, *not on the Pacific Mail dock*” (p. 925). This is all we hear of the incident or of the statement.

The overage attributed by government exhibits 125 and 130, as deduced from the books, was, in the case of the transports, and covering the 9 years 1904-1912, relatively little—some 1528 tons, as against 29,362 tons, attributed to the mail liners as draw-back ships (pp. 2812, 2866). The government confined its efforts at the trial to the mail steamships; not a single operation as to the transports was gone into. But the significance of Powers’ statement is just here—that if Mills had been a party to a conspiracy to defraud the Pacific Mail, and incidentally, out of draw-backs, to defraud the government, he would never have limited a suggestion of underloading to the comparatively negligible instance of the transports, in exclusion

of the Pacific Mail Company's steamships. The significance of this incidental and fugitive remark of Powers cannot be discounted.

Now, as to Mr. J. B. Smith. We have already quoted the testimony of Powers, that Mr. Smith never gave him any instructions to underload or overload tubs. He has just this as to Mr. Smith: "*I think*", he says, that he reported one complaint to Mr. Smith, made by an engineer of the "Manchuria" named Bunker; but does not say whether it was as to quantity or as to quality; and, "*as far as I can remember*", he told Mr. Smith that Bunker was kicking, and "*I believe*" Mr. Smith said that Bunker was always kicking, or something like that.

"I never", says Powers, "had any conversation with defendant James B. Smith about how it happened that the Pacific Mail steamships permitted these shortages to exist" (p. 887).

As to the defendant Mayer: He had nothing to do with the barges, that was not his business.

"I don't remember", says Powers, "any conversation with the defendant Mayer about these overages on the barges, or the alleged discrepancy existing between the in-take weight and the out-turn weight" (pp. 887-8).

A word or two more, and we have done with Edward Powers. His explanation of what caused the overages in the transfer of coal from the barges to the steamships is two-fold and is entirely reasonable: First, the overages were due to the system adopted, pursuant to the government regulation, for the

transfer of coal from the barge to the ship; second, they were due, also, to the increased weight of the coal, from the absorption of moisture, in the course of transfer, if not, as well, prior thereto. Under the government regulation, accommodated as a practical matter to the exigencies of the case, only four out of sixty of the buckets that went up on the hoist were weighed on the scales; the other 56 buckets were never weighed. It is now clear, no one explains it any better than Powers in testimony that we have quoted, that the four weighed buckets would, to an extent—at least, as Powers says, to the extent of a couple of shovelfuls or more—contain in coal a quantity in excess of what was contained in the unweighed buckets. With apologies for any repetition, we quote from Powers:

“To what do you attribute the fact, Mr. Powers, if it be a fact, that the tubs that are weighed have some more coal in them than the tubs which are not weighed?

A. Well, I attribute that to the fact that they have more time to put it in” (p. 911).

Such a system, it is evident, going largely upon mere estimate, must necessarily be inexact; but the commodity considered, the handling of such a commodity, and the pressure for dispatch in the coal-ing of ships, no system could obtain or endure which was over-nice or too exacting. It may have been a poor system, if mathematical precision was the ideal, but it was practical and practicable. When

Powers was asked about his conversation with Mr. McCutchen, Mr. Olney and Mr. Moore, he said:

“Q. Mr. Powers, have you now related all of that conversation?

A. There may be more, but not that I recollect of.

Q. Can you not think for a moment, and see in your own mind whether or not in fact there was more?

A. I stated there may be more.

Q. Do you recollect, now, any more?

A. I have stated I do not.

Q. Do you remember saying anything in regard to this system of weighing, as a system of weighing?

A. Yes, sir, I did.

Q. Did you not remember that until I recalled it to you?

A. I did not; if I did, I would have answered it.

Q. What, if anything, did you say in that regard?

A. *I told you it was a very poor system, and that that was partly responsible—partially responsible—for these overages*” (p. 943).

He was then pressed, for several questions and answers, to state whether the use of the term partially—partially responsible—was not a later interpolation of his; whether he had not laid the whole responsibility on the system. He says that he *believes* he used the word part or partial—“I believe I did.” He says that this part of the conversation had gone out of his mind until it was just suggested to him by counsel, and now it has come back into his mind. And when asked whether he was now

able to say “positively and unequivocally” that this word “part” or “partial” or some such word, was really used by him, he does not answer positively and unequivocally. He says, “I am *pretty sure* it was”; and he gives as a reason that “otherwise I would be very foolish to give the statement to you that 35 per cent overage was on account of that.” We have said enough about such a percentage as 35 per cent, derived from the Mills blotter, and we need not repeat that the actual percentage on the whole nine years was less than 5 per cent. Nor does Powers pretend that he made any reference to 35 per cent in this conversation—he says he did not (pp. 943-4). Once more he is asked, “Do you positively recall, so that there can be no mistake about it in your mind, that in connection with this system of weighing, and the responsibility for the overages, you used the word ‘part’ or ‘partial’, or some word similar in meaning?” His answer is anything but positive—“I *believe* I did,” is what he says (p. 944). And again he says: “I said that that was partly responsible, *and that was very true*” (p. 945).

Again, Mr. Olney put some questions to him:

“MR. OLNEY. Q. Mr. Powers, referring to this occasion when you came into the office of McCutchen, Olney & Willard and there met Mr. Moore, Mr. McCutchen and myself, I will ask you if you did not have this conversation with us and if I did not say to you, ‘Mr. Powers, we want to know the truth about this matter’?”

A. You asked me concerning the barges.

Q. I will repeat the conversation to you, and then I want an answer, yes or no, from you in regard to it: If I did not open the conversation by saying to you, 'Mr. Powers, we want to know what the truth is about this matter; is there anything wrong or was there anything wrong down there in connection with the loading of the vessels, or anything that you know about down there on the waterfront?'—and did you not say, 'Yes, there is something wrong'; and did we not then ask you what was it which was wrong, and did you not then reply to us *that the thing which was wrong was that the buckets were heavier loaded when they were weighed than when they were not weighed?*

A. I stated that *that was partly responsible.*

Q. And did we not ask you in response to that statement how that came about and how it was done, and did you not then say to us, didn't you go into an explanation and say to us, among other things, or say to us primarily as the explanation that the buckets when they were not being weighed came up at the rate of less than one minute and that when they were weighed it would take three or four minutes to weigh them or to weigh one, and that the men in the hold were being driven all the time to meet the hook, as you phrased it——

A. (Interrupting.) At times.

Q. (Continuing.) And that it was all they could do to load the buckets when they were going up fast in order to meet the hook?

A. At times, I said.

Q. And that when the weighing took place they had more time and they loaded the buckets heavier in that manner; and did we not ask you if that was done intentionally and you said, 'No, it is simply an incident of the business'; and did we not ask you in that connection, were any instructions given or was there any under-

standing that the buckets which were to be weighed were to be weighed heavier, and did you not answer, no; and did you not also, in response to that question, say, 'It is simply the human element of these men trying to meet the hook'; and did we not then say to you, 'Why, there is nothing fraudulent or wrong about that'; and did you not say, 'No, that was simply the human element'; and did we not then ask you, 'Was there anything else wrong down there that you saw,' and did you not say, 'No, there was not'; and did we not then ask you, 'Were any instructions issued,' or in the course of the conversation did we not ask you if any instructions were issued by Mr. Mills or by anybody else, or was there any understanding in regard to this matter, or in regard to anything wrong down there, and did you not say, 'No'?

A. *Part of that is true.*

Q. And part is not true?

A. And part is not true.

Q. Will you *pick out the parts that are not true?*

A. I said the system was *partially responsible*; I did not tell you that *I had not received any instructions from Mr. Mills.*

Q. You did not?

A. No.

Q. And you limited your answer to the fact that the system was only *partially responsible?*

A. I did.

Q. *Is there anything else in the conversation that is untrue?*

A. *That is all I remember*" (pp. 950-952).

Second, as to moisture, that also contributed. Powers is asked, "In view of the services which you rendered on behalf of the Western Fuel Com-

pany, and the knowledge that you acquired during the time that you were hatch-tender, and during the time you were assistant to the superintendent, Mills, what knowledge have you upon the subject as to the cause of this overage?" And he answers: "Moisture helped a little" (p. 881). The examination proceeds:

Q. You say moisture helped a little?

A. Yes.

Q. What kind of moisture?

A. Moisture out of a hose.

Q. Oh, moisture out of a hose?

A. Yes.

Q. Was that Spring Valley moisture?

A. No, salt water.

Q. To what extent was this salt water moisture responsible for the overage?

A. Well, they turned the hose in, and, I guess, that added a little to the weight.

The Chinese crew on the steamers would play the water upon the coal on the barge *sometimes for three or four hours*. I stopped that practice once or twice. The practice was an occasional one" (p. 881).

He goes on, in the next sentence, to unite, to these conditions of moisture, the "system" employed in transferring the coal, as a concurrent and preponderating cause: "It would frequently happen," he says, "that coal would be discharged from the barge into the vessel without any salt water being upon it at all, and that, notwithstanding that fact, there would be an overage. I also thought that the method of weighing, that is to say, the custom of having some tubs go on the scales a little heavier than the

others, might be responsible for the overage. *It is true* that the "overage, or a *large part* of it (recall here his expression, 'partly responsible'), was due to the fact that there was more coal in the tubs which were weighed than there was in the tubs which in fact were not weighed" (pp. 881-2). Read this in connection with what he also says:

"Q. To what do you attribute the fact, Mr. Powers, if it be a fact, that the tubs that are weighed have some more coal in them than the tubs which are not weighed?

A. Well, I attribute that to the fact that they had more time to put it in" (p. 911).

We now leave Edward Powers, noticing, briefly, however, a circumstance as to which the government counsel questioned him on direct examination. The Fuel Company, and we are speaking from this examination of Powers, had a storage ship, the "Algoa", which lay in the stream, with coal in storage, for a year or a year and a half (p. 891). Her coal was finally discharged, in varying quantities (p. 890). The hatchways were closed, when she was not discharging, and at one time or another

"the coal became heated, the coal was not actually burned, however; there was no evidence of that. The coal at the top, at the time of the discharge of the 'Algoa', was dry, but underneath it was moist where the coal was heating. The upper part of the cargo, however, contained less moisture than when the ship had been loaded. The cargo was discharged into the barges; the coal was ultimately discharged from the barges into steamers" (pp. 890-891).

Powers, who was assistant superintendent at the time (p. 888), says that the coal was discharged into the barges according to this average "system", and that he directed "that it be correctly weighed" (pp. 892-3).

The various discharges of coal are now gone into by reference to the entries in the Mills blotter, some of the entries therein having been made by Powers himself, and the figures therein were sent by him, Powers, to Mr. Mills (p. 893, pp. 891-2, p. 898). David Powers, not Edward Powers, says that when the "Algoa's" coal heated, some pipe was stuck down in the coal, but no water was used at the time because, so he says, Mr. Mills thought the salt water, fresh water not being available, would take the strength out of the coal; and David Powers gives his opinion that "there must have been a shrinkage in the weight of the cargo due to the fire," but he does not know how much it was (pp. 705-6).

Professor Parr, who was competent to give an opinion, testifies:

"Q. Let me put a specific case to you: Take the case of a vessel that was loaded with coal in, say, January, and the coal was kept under hatches for a year and half, and during that time heated—at the end of that time it was found to have heated, and it was then discharged; within what limits would you expect a change in weight, an addition in weight to that coal, by reason of oxidation? This Australian coal, by the way, that you are dealing with?

A. I would say that the amount of oxidation would in all probability range somewhere between 2 and 4 or possibly 5 per cent. Those would be the extremes, I would say" (p. 1615).

Edward Powers, it is true, says that not all of this "Algoa" coal was in oxidation—"the coal at the top, at the time of the discharge of the 'Algoa' was dry," he says, "but underneath it was moist, where the coal was heating," and the result of it all is, as stated by government counsel, that the out-turn weight of the "Algoa" was, neglecting mere pounds, 8535 tons, with an overage of 116 tons in excess of the in-turn weight, which was 8419 tons (pp. 890, 899): or one and thirty-seven hundredths per cent.

We have now considered with fullness and particularity the testimony of the two Powers respecting the transfer of coal from the barges into the ships. It is the testimony of the two main witnesses for the government. It is the testimony of two discharged employes, one of them a convicted smuggler, an informer, and a hired spy; the other, bitterly hostile to the defendants, especially to Mr. Mills, and from whom, as we have shown again and again, the truth had to be dragged. None the less, to any open mind, coming to the consideration of their testimony, it cannot but appear therefrom that, so far from any conspiracy to defraud the steamships being made to appear, it is put beyond a reasonable doubt that the overages in delivery were due to the system of transferring the coal, and, to an extent, to the moisture to which it was

subjected; that there was no plan or scheme, there were no instructions, to defraud in the process of transfer; and that any disparity between the weights into the barges and the weights out of the barges was inherent in the process itself, incidental to it, and in the human nature of the men actually engaged in that process. So far as any accusation against Mr. Mills, not to speak of Mr. James B. Smith, or of Mr. Mayer, is sought to be rested on the operations of delivery from barge to ship, the case here, without another word of explanation, may be confidently submitted on the testimony of the two Powers.

Three ex-shovelers, who had worked at one time or another in the barges, were rounded up by David Powers—Philip Ganesi (pp. 1113-1116), Jim Balestra (pp. 1121, 1124) and Tony Belish (p. 1138). They were put on to show that the men shoveled more coal into the weighed buckets than into the unweighed buckets,—including the hatch-tender. Their testimony does not relate to any of the defendants. Ganesi speaks of a hatch-tender who would say:

“You fill them up pretty good when they are going on the scales, and when they are not going on the scales he don’t care”;

and Ganesi says

“The tubs that were being weighed contained more coal than those that were not weighed” (pp. 1107-8).

Ganesi was asked:

“Q. Now, you say that when a weight was to be taken, fine coal was put into the bucket?

A. Yes.

Q. What kind of coal do you claim was put in the bucket when a weight was not to be taken?

A. Anything, rock, full or not full, meeting the hook, and turning her loose, and letting her go.

Q. You would meet the hook, turn her loose, and let her go?

A. Yes.

Q. When the weight was to be taken, you would put in fine coal, would you?

A. Yes, and give plenty of chance to fill them up.

Q. You had plenty of chance to fill them up, too?

A. Yes.

Q. That was because the four buckets were to be weighed in succession, was it?

A. Yes.

Q. And you had more time then to put in the coal in the buckets than you did when they were going up at other times?

A. Yes.

Q. And so, when you had plenty of time to fill the buckets, you used to put in all fine coal, did you?

A. Yes, the heaviest there was on the barge.

Q. When you were having to meet the hook, would you put in whatever kind of coal that was handiest for you to get in the bucket?

A. Yes, to get in the tub” (pp. 1111-1112).

Jim Balestra says:

“I never got any direct order to overload tubs from anybody, with the exception of one

hatch-tender by the name of Rooker, who would give us a wink at the time when it was time for the custom officer to take a weight, and we knew the balance" (p. 1119).

The "balance" was, that when weights were taken "we would go to work and put on as much coal as we could possibly put on all of the tubs, and when we did not have to take weights we would put it on any old way, we would always leave the tubs *not quite full*" (p. 1119).

Balestra says, further:

"Most of the time the custom-house officers used to complain that the tubs were overloaded when weights were to be taken; some of them, however, did not complain; when a custom-house officer would complain, we, as a rule, would have to take some of the coal off the tub (p. 1119).

Balestra adds the embellishment that on occasion "if we had a chance to do so," he would step on the rope of the tub and make the scales weigh heavier, but "we could not do that very often"; nor does he pretend that even the hatch-tender Rooker ever gave him any order to do that.

But, like everybody else, Balestra has to confess the fact. He says:

"We work under pretty high pressure when the weighings are not being made; it is just about all we can do to fill the tubs and meet the hook" (p. 1123).

And he very much qualifies the statement that the weighed tubs were in all cases filled with fine coal (pp. 1126-7-8-9, 1132-3); and he adds:

"I quite often saw the custom-house weigher direct that a part of the tub-load of coal be removed before a weight was taken, that was a common occurrence" (p. 1134).

Tony Belish, the last of the trio, says:

"They would fill them up good, you know, load them; they would put a little more coal in the tubs when they go on the scales. I have done that myself. The hatch-tender gave me a sign to that effect; he would say, 'this fellow is going on the scale,' and would make a sign which everybody knows who has worked down there five or six years."

The hatch-tenders "made trouble when the light tubs went on the scales." This is the first intimation that light tubs went on the scale. And the hatch-tenders would say, according to Belish, "Why don't you give me a heavy tub on the scales?" (pp. 1137-1138). This sign he speaks of he explains a little more fully:

"Q. Was there one tub loaded immediately under the hatch at the time a whistle was blown for a weight?

A. One tub right in the hatch full.

Q. Would the men take some fine coal and go over and fill that tub, then, in the presence of the custom-house weigher?

A. When the custom-house officer was weighing, they can't put it in, they can't have any chance.

Q. That tub would have to go up just as it was?

A. Yes.

Q. Now the only sign you had, or only signal you had that tubs were to go on the scales, was either a whistle, or the hatch-tender would say, 'the tub is to go on the scale'?

A. Yes.

Q. That was the only sign you had, was it not?

A. Well, sometimes he gave me a sign like that. (Illustrating.)

Q. A sign like that?

A. Yes.

Q. That is to say, *before* you knew the tubs were to go on the scales?

A. Sure" (p. 1140).

He goes on to say, however, that the hatch-tender said, all the time, "on the scales".

"Q. Did you ever hear the hatch-tender say, 'on the scales'?

A. Yes, all the time.

Q. He said that all the time, that they were to go on the scales?

A. The hatch-tender, yes.

Q. On every occasion, isn't that correct?

A. I don't know what you ask me.

Q. Now, I will put it to you slowly, and see if you do not understand: "Whenever the hatch-tender wanted the tub to go on the scales he said out loud, didn't he, 'On the scales'?

A. Yes, he sung out, 'On the scales'.

Q. And then all the men knew the tubs were to go on the scales, didn't they?

A. Yes.

Q. And that was the sign or signal that you had, was it not?

A. Yes, but as I told you, there was one tub in the hatch, and the hatch-tender says, 'You fellows come up,' and there was three tubs

in the pile, *and you put more coal in those three tubs*" (pp. 1141-1142).

Tony, like Jim Balestra and Ganesi, confesses the fact. He testifies:

"Q. How long did it take to load a tub when you were hoisting rapidly?

A. To load one tub?

Q. Yes.

A. Well, it took about a minute, a minute and a half.

Q. About a minute and a half?

A. Yes.

Q. Did you work *very rapidly, very fast*?

A. Sure, *have to do it*.

Q. *Have to work very fast*?

A. *Yes*.

Q. Did you always work with a shovel, or did you scoop it up?

A. Sometimes *scoop it up* and sometimes with a shovel.

Q. When you can, you scoop it up?

A. *I scooped it lots of times*.

Q. When you cannot scoop it up, you put it in with a shovel?

A. Yes" (p. 1143).

He adds that sometimes they weighed every fifteen minutes (p. 1143), and when asked if he was quite certain about that he says:

"Well, I know, because some custom-house weighers took them every ten or fifteen minutes, as Bill Hubbard worked about six years ago, by Jesus, he took fifteen tubs one after the other" (p. 1144).

The government also called Robert Sass, whose testimony we have noticed on another matter, and

Frank McKenna, neither of whom, any more than the three shovelers, pretends to connect any of these defendants with the overloading or underloading of tubs, or to have had any instructions from anybody on the subject. Sass says that the weighed tubs were filled up, almost always with fine coal, the unweighed tubs, the majority of them, were "very slight"—he does not explain this term—and there were even times when "the tubs that were not weighed would contain as much coal as when weighed on the barges" (pp. 1098-1099). He says further:

"It is my understanding that the custom-house weigher has the say as to whether or not every bucket shall be weighed or not weighed. If a bucket is too light, he might order it up and refuse to weigh it; or he may brush some of the coal off, or have some of the coal brushed off, because the bucket was overloaded" (pp. 1102-3).

And further:

"I cannot give you any idea as to how often it had been that I saw the custom-house weighers insist upon coal being brushed off the bucket before they would allow it to be weighed" (p. 1103).

Again:

"When the custom-house weighers ordered the men to brush off some of the coal from the tubs before they would allow them to be weighed, the tubs were filled up *above their sides*" (p. 1104).

The other government witness, Frank McKenna, now employed at Payne's Bolt Works, had worked for the Western Fuel Company on the barges both before and after the earthquake—"up to as late as two and a half years ago" (p. 1165). He testifies:

"Q. When the hatch-tender would sing out 'two men come up, *tub on scales*', where would the first tub be that was afterwards to be weighed?

A. The first tub would not be hoisted yet. It is after the last tub lands that he says 'two men come up', and then they would hook on a tub and come up and weigh it. There was no loss of time.

Q. You understand what is meant by meet-the hook, do you not?

A. Yes, sir.

Q. Would this signal be given by the hatch-tender before the hook would be met?

A. Well, as soon as the tub was landed. Then those men would shove their tub in and then they would come up and those other fellows would fill that tub and they would weigh a round of tubs—three.

Q. What, if anything, did you notice as to the quantity of coal in tubs that were weighed as compared with those that were not weighed?

A. Well, on account of weighing them, *and they had so much time there*, and they could fill them *a little fuller*.

Q. Irrespective of what they could do, Mr. McKenna, what was the practice as observed by you?

A. Well, *the men were worked so hard to meet the hook that the tub would not come as full according to my mind as I could see it as it would be when it came on the scales*

because then they were not worked to death and sweated to death" (pp. 1166-7).

He says further:

"Mr. ROCHE. Q. Did the tubs which were weighed contain more coal so far as quantity was concerned than the tubs that were not weighed?

A. Well, as I explained before, the men would have a little *more time* below and they would naturally *scrape up and shovel in the scrapings and everything* and that would *naturally be a little more coal at times* than at previous other times. Then again, they would probably put big lumps in at times to block the hole *so as to have a little rest*, and then *they would have to get crowbars to open up the hole*.

Q. Can you describe the appearance of the coal in the tubs, whether it was below the sides of the tub or above the sides of the tub, or how?

A. Sometimes there would be lumps, and at other times *finishing up the barge* there would be *screenings like*, and naturally the *screenings* in my eyes would weigh *more than the lumps*, than the heaviest part of the big lumps.

Q. Let me direct your attention to the tubs that were being weighed during the period of eight months prior to the fire; just describe to the jury how the tubs would appear so far as the quantity of coal was concerned, whether the coal would be above or below the sides of the tubs?

A. Well, I should judge, just as I said before, that the tubs coming up *to me apparently they looked a little bit heavier when they went on the scales than they did otherwise* because naturally looking at them more on the scales perhaps made me think so" (pp. 1167-8).

McKenna goes on to say that he worked for the Western Fuel Company, on and off, for about six and a half years after the fire, his last work being two and a half years ago, on the Pacific Mail Liner "Korea". "I had the same opportunity for observation as before the fire" (p. 1168). His examination proceeds:

"Q. What was the practice pursued by the Western Fuel Company after the fire with reference to putting coal in tubs which were weighed as compared with the quantity of coal placed in tubs which were not weighed; in other words, would your testimony be the same?

A. Well, I will explain that myself now in a second. Just as I say, when the tub would be on the scale we would naturally take more notice to it because then the tubs are coming up, it is just, *'there she goes' and you dump it, and down she goes again.* When I went on the scale we would naturally take notice—not that it concerned us in the least, but we just may have looked down to see the fellows pulling them on the scale. It was about the same.

Q. Was the same procedure followed, so far as the signal was concerned that was given by the hatch-tender?

A. It is just as I said—he would say 'on the scales,' 'two men come up' and they would land their tub and come up to help pull the tub on the scales.

Q. The two men would come up before the tub was hoisted from the hold?

A. Oh, yes, there would be no delay, they would go up immediately.

Q. And how many minutes would be occupied in weighing a round of four tubs, when four tubs were weighed?

A. A round of four tubs would not take more than 6 minutes.

Q. 6 minutes to weigh a round of tubs?

A. Maybe 7 minutes for four tubs. It was according to the barge's list; sometimes they would miss the rope and would have to pull a little heavier or a little harder.

Mr. ROCHE. Q. Would you, upon occasions, see the quantity of coal that was contained in the tubs which were not weighed?

A. *Oh, I have seen tubs coming up there with lumps sticking up a foot or more*" (pp. 1168-1170).

The hatch-tender, called, in the testimony of the shovelers, "Rooker", and said to be a Mexican (p. 1135), was Andrew Rocca. He was first a coal shoveler with the Fuel Company for some five years, before that he had been a steamship fireman for five or six years, and for the last three years or so he has been the hatch-tender for the Western Fuel Company (p. 1333). When he was coal shoveler neither of the two Powers told him to overload or underload buckets, indeed, their instructions were "to keep the tubs even as much as I could" (p. 1333). Now were there any instructions to go into the fine coal when weights were to be taken, and to use lump coal when there was no weighing (p. 1333); similarly with the other hatch-tenders (pp. 1333-4); when Rocca became hatch-tender himself, his own direction to the shovelers and practice was to keep the tubs evenly full (pp. 1333-4). The custom-house weigher would sometimes complain about tubs coming up full "with a little cone on

top, and he would order that tub up without being weighed" (p. 1335). "The custom-house officer would not stand for an over-filled tub" (p. 1335). On a few occasions when Rocca was shoveler, and also when he was hatch-tender, the custom-house officer would say: "Here, you shall not weigh that tub because the tub is more than full, the coal is heaping up above the top of the tub" (p. 1336). Such tubs would be sent up without being weighed (p. 1336).

The other hatch-tender, Frank Wilson, has held that job with the Fuel Company for the last ten years (p. 1325). It is the hatch-tender who employs the shovelers—"I employ the gang or crew that does the shoveling of coal on the barges" (p. 1325). He explains:

"The instructions that I give to the shovelers are that the buckets are to be kept even at all times. I never have given instructions to the men to overload the buckets when weights are to be taken and to underload them when weights are not to be taken. I have not given instructions to men to go into the fine coal or mix the fine with the lumps when weights are to be taken. When I say that when the tubs are filled they go on to the scales whether they contain fine or lump coal, I mean that when the custom-house officer orders us to take weights I have to put the tub on the scales whether it contains lump or fine coal. When a barge is loaded, the fine coal is amidships; that is, in the center, and the lump coal is in the wings. When weights are called for, the shovelers put in whatever coal happens to be in immediate proximity to the then location of the buckets.

In other words, they fill the tubs with whatever coal may be handiest. I do not know when the customs-house officer is going to take weights" (pp. 1325-6).

And again:

"I have no way of telling when a custom-house officer is going to call for a weight. When he does say that he wants a round of weights I have to give the engineer a signal that the tubs are going on the scales. I give this signal by hollering out on all the barges except two; on those I use a whistle. *In addition to the custom-house officer, the weigher or tally clerk for the Pacific Mail Steamship Company is present when we are loading the liners of that company.* His name is Park. Sometimes Mr. Ed. Smith is also present, but the majority of the time he is not. We try to keep the tubs that are not weighed, as well as the tubs that are weighed, even. If a tub comes up that is not even we jog the men's memory and tell them to keep the tubs filled" (p. 1327).

Further:

"It has always been the rule to keep the tubs even, I believe Mr. Mills first gave me instructions to that effect about ten years ago" (p. 1328).

They were both working for Rosenfeld Sons at the time. Mills gave him the same instructions when they went to the Western Fuel Company: "He told me to keep the tubs always even, and to have no trouble with the customs-weigher" (p. 1329). As to Mr. J. B. Smith, "I have never spoken to Mr. Smith in my life" (p. 1329).

And again:

"I remember distinctly that Mr. Mills told me not to have trouble with the customs-weighers, and I never did have any with them that I know of" (p. 1329).

Wilson, like Edward Powers, tells of the moisture in the barge coal.

"In the winter time," he says, "or after rains, the coal is pretty wet. The men's feet get wet from working in it. In the summer-time the boatswain of the steamer, while washing the deck down, is accustomed to play the hose on the coal in order to lay the dust so as to avoid dirtying the steamer. He uses a five-inch hose. The foreman of the bunkers of the steamer also puts water on the coal in the summer-time so that the dust will not choke the men who are working in the bunkers. The water is put on the coal while it is still in the barge because if the coal is dry and dusty and goes into the bunkers that way there is no chance for the dust to escape. On the big steamers where the chutes into the bunkers are high the coal may drop 60 or 70 feet into the bunkers, but in most cases the drop is not so far. This matter of wetting the coal down during the summer months is of frequent occurrence. The trimmers would refuse to work if the coal were not wetted down. The trimmers are the men who stow the coal in the bunkers of the vessel" (pp. 1331-2).

And again:

"The water was discharged on the coal in the summer time between six and seven o'clock in the morning, when they were washing the decks down. The custom-house weigher would

be present at the time, I have seen him there on such occasions. They play the water on the coal may be fifteen or twenty minutes at a time" (p. 1332).

Again:

"The coal is also wetted down in winter time if it happens to be dusty, they are not putting water on the coal now because rain is so plentiful. I have, myself, at times, been in the bunkers of the ship; the men do not play the water on the coal after it has got in the bunkers, that is always done on the barge. I would protest to the Pacific Mail Steamship Company playing the hose on the coal if they kept it up too long, for the simple reason that the water would run through the coal and come out on the skin of the barge, and then the men would get their feet wet" (pp. 1332-3).

Arthur Mullan, who had been general foreman, and later, superintendent for the Pacific Coal Company, prior to that, general foreman of the Black Diamond Coal Company—a continuous experience in San Francisco as general foreman of over thirty years,—went with the Western Fuel Company as general foreman, and has held that place, since October, 1911 (p. 1313). In that capacity,

"I have charge of the coal barges and of the stevedores and hatch-tenders" (p. 1313). "The hatch-tenders' duties are to hire the gang of men that shovel. I have nothing whatever to do with that matter. I do not suppose I am personally acquainted with more than five or six men who are working on barges" (p. 1314).

And as to the importation of coal, he says:

“I have no charge or supervision whatever over the stevedores who are employed about the bunkers in the unloading and discharging of vessels bringing imported coal into the port of San Francisco—those men, I believe, are under the supervision of Mr. Schultz” (p. 1314).

Mr. Mullan has

“at times observed the custom-house weigher taking weights at the Pacific Mail Docks, I have observed that they weigh four tubs at a time, the tubs that are weighed and the tubs that are not weighed are kept as even as possible, according to my observation” (pp. 1314-15).

He has never given instructions to the hatch-tenders to overload or underload tubs, or to mix fine coal with lump coal in some tubs, and fill others with lump coal, nor has anybody, to his knowledge, given instructions of that kind to the hatch-tenders.

“When a particular barge is to coal a vessel, I communicate with the hatch-tender to get his gang of men to go to work on the barge; as to what men he shall get, I make no suggestions, that is entirely his province” (p. 1315).

His instructions to the hatch-tenders to keep the tubs evenly filled (p. 1316) were verbal, not written (p. 1316), they were general instructions, not referred to any particular barge (pp. 1316-17).

“It was not because I had noticed they were overloading the tubs that I told them to load the tubs evenly; it was because the tubs were

going up fast, and one of the tubs seemed not to be as full as it ought to be—that is why I told them to fill the tubs evenly. When I first took charge there, I notified the hatch-tenders to be careful and have the tubs filled evenly. At that time Mr. Mills took me to the barges, and told me to see that the tubs were kept evenly filled” (pp. 1317-18).

He says again:

“I never gave instructions to the men who were shoveling below in the hold of a barge; my jurisdiction did not extend to them, they were under the hatch-tender’s control” (p. 1320).

The fatuity of any attempt to connect Mr. Mills with a conspiracy to defraud the Pacific Mail Steamship Company, or incidentally the government, by instructed and systematic disparity in the shoveling of the coal, as between the weighed and the unweighed buckets, ought to be apparent enough. As Mr. Mills himself says:

“Such instructions as I give to the foreman of the barges or to anyone connected with the barges, are to the effect that the buckets shall always be kept even. I have never told anyone, either foreman, hatch-tenders, or stevedores, that the buckets were to be loaded to overflowing when weighed and were to be underloaded or loaded only half to three-quarters full when they are not weighed. It is not true that even on a single occasion I ever told Edward Powers that I wanted *any* buckets either underloaded or overloaded” (p. 2099).

And again:

“I have nothing whatever to do with the selection of the individual stevedores who shall compose the various crews; my acquaintance with the stevedores is very limited.”

And he adds, as might be anticipated:

“that during the nine or ten years in which the Western Fuel Company has been engaged in business, hundreds and hundreds of different men have been employed as stevedores” (p. 2099).

Arthur O’Leary, a coal trimmer in this harbor for seventeen or eighteen years, foreman trimmer for the Pacific Mail for 6 or 7 years, and foreman trimmer for the Western Fuel Company under Mr. Mullen for two years (p. 2085) testifies much along the same line as Edward Powers and Frank Wilson in respect to moisture in the barge coal. He says:

“With reference to the coaling of the Pacific Mail boats, I would say that it is our practice to wet down the coal in the barges when it is dry and dusty. We use an ordinary fire hose for that purpose. Sometimes we wet the coal down twice or three or four times a day, according to its condition. The reason for this wetting of coal is that there is very little ventilation in the coal bunkers, and we have to keep the dust from flying. Sometimes when we wet down the coal so much that it comes out on the skin of the barges the men working in the holds of the barges complain. This wetting down of coal has been the custom and practice as far back as I can remember in

the trimming of the Pacific Mail liners" (p. 2085).

There were no special instructions for this wetting.

"Nobody gave me instructions to play this water on the coal while I was working for the Western Fuel Company, I simply followed what had theretofore been the custom—I have said we would sometimes wet the coal three or four times a day, and for periods from a quarter to half an hour" (p. 2086).

So much, now, for the testimony and its bearings of the men who actually handled the coal on the barges. The government put two customs inspectors on the stand, who had been sent specially to the water-front to report their observations of the transfer of the coal from barge to ship. They are John W. Smith, to whose testimony on another phase we have called attention, and E. D. Enlow. Their testimony is, in effect, that the weighed buckets had more coal, by a sack or two, than the unweighed buckets. Smith speaks of the coaling of the "Korea" (p. 1002). He was accompanied by Enlow and David Powers (pp. 1002, 1003). "The tubs that were not weighed," he says, "were lighter than those that were weighed" (p. 1003). He repeats this:

"The tubs which were weighed were in every case heaping full, well rounded out, and the tubs which were not weighed were hardly ever *rounded out*. To my recollection, none of them were as full as the ones that were weighed. In

the case of the tubs that were not weighed, the coal would sometimes be below the top of the tub. It would quite often be that way, to my recollection, *though I could not say positively*, none of the tubs that were not weighed were rounded out as full as the ones which were weighed. Referring still to the day time, it appeared to me that the tubs that were weighed had more fine coal in them than the tubs that were not weighed" (pp. 1003-4).

This was in December, 1912—in the day time. He goes to the "Korea" again at night, on December 18th, accompanied again by David Powers and Enlow (p. 1004). "On the night of the 18th," he says, "when weights were not being taken, *some* of the buckets were only *fairly filled*" (p. 1006). Some buckets, he starts to say, "to the best of my recollection" were not half full (p. 1006), but such buckets would get Smith, or his testimony, into trouble at once, for a bucket, half full, could not, as we have seen "trip" at the bunker. Smith must have been sensible of this, for he immediately proceeds to say: "There were several times when they had difficulty tripping the tubs at the point of discharge" (p. 1006), but nowhere does he pretend to say that a single bucket failed to trip. Indeed, he adds: "Sometimes I could not see the quantity of coal in the tubs upon these occasions when there was difficulty in tripping them, though I could see at least *a foot* down in the tubs." Twelve inches seems to have been his limit, and he was on the bridge of the "Korea", fifty feet away (p. 1005).

He says also that in the day time the tubs that were not weighed were better filled than they were at night (p. 1006). He left at midnight, returning at half past one in the morning, the hoisting went on until 5 o'clock, and "the situation was about the same in this regard as in the earlier part of the night, except that in the morning, near five o'clock, the unweighed tubs *appeared to me* to be *better filled* when they came up" (p. 1006).

He also says, what has been made clear, we think, by this time, that "the tubs are lifted very rapidly to the bumper after they leave the hold of the barge, I cannot say how long the tubs would be in my view;" and he estimates that he was "about fifty feet away from the place where the operations were going on" (p. 1008). He describes the dumping as "a very quick operation", not as quick as the eye is, but "just as soon as the tub strikes the bumper and is released, it dumps by mechanical device pretty quickly" (pp. 1008-9). He could see into the tub, he will not make it more than a foot, "though I was fifty feet away from it, and only elevated possibly five feet higher than the bumper" (p. 1009).

On one of these occasions in December, he saw the "Theobold" discharging in the day time, the unweighed tubs running better than at night, the weighed tubs rounded out, a good deal of fine coal in them, some with more lumps in them than others

(p. 1009). On being pressed as to his observation, he says:

“Q. Do we understand that from your observation of those tubs they were so loaded as that the weight when recorded would show the greatest amount of coal that could be put into those tubs?

A. Well, they were *pretty near as full* as they could be filled.

Q. Pretty near as full as they could be?

A. And safely carried to the hopper.

Q. And the coal was selected so as to produce the greatest weight?

A. I won't say that *every time* it was selected; *I cannot say that*.

Q. Well, it may have just so happened?

A. *It may have so happened*” (p. 1010).

The foregoing, in the case of Smith, as in the case of the other witnesses, is, we venture to think, a fair presentation of the substance of his testimony. It requires no discussion.

Now, as to Enlow. Says Enlow, speaking of the day-time visit in December, 1912:

“When they took the weight the tubs were well filled, and we saw but little lump coal in them; but when they were not weighed we saw quite a number go up that were not well filled,—a number of times, for instance, you might take a *two-bushel sack* of coal and empty it in the tub without making it any fuller than when they were weighed. Occasionally, therefore, there might be a difference of *a sack of coal* between the tubs that were and were not weighed respectively” (pp. 1048-9).

Enlow was also at the "Korea" on the night of December 18th, "investigating a little matter connected with smuggling," and accompanied on the investigation by Mr. David Powers and Mr. Smith (p. 1049). They were on the bridge of the "Korea", 100 feet, he makes it, from where they were discharging the coal (p. 1049). Again, he makes it 40 or 50 feet, to where the tubs discharge (p. 1049). He distinctly says, "There was no difficulty in tripping the buckets" (p. 1049). "I noticed that when they were weighed, they were well filled, and when they were not weighed, there were many of them that were like in the day time, only worse" (p. 1050). According to him, it was but six or eight inches that they could see down into the tubs (p. 1050). "*A sack or two* of coal could be poured in *some* of them without running over" (p. 1050). And again: "When the tubs were weighed, they were well filled tubs, you could not see much lump coal, but when they were not weighed, we would quite frequently see big lumps of coal down in the bucket" (p. 1051).

It is scarcely worth while to labor the point, the testimony has taught us that the men had more time to put scoops or fine coal in the weighed bucket, but we quote this from Enlow:

"Q. When you talk about the quality of the coal, you are simply referring to the quality of the coal that is at the top of the tub, are you not?

A. That is all.

Q. And you cannot tell anything about the remainder of the coal that is in the tub, either when it is being weighed, or when it is being dumped, from that distance, can you?

A. No, I could not do that" (p. 1054).

There remains another government witness, also a custom-house man, J. T. F. Burns, who had spent some time at the Mail Dock between 1906 and 1910, fifteen or twenty minutes at a time, a freight inspector, he was "just loafing about, waiting for other freight to come up" (p. 1156). He was asked to give his observation as to the tubs. He says:

"A. My observation of the weighing was that they would take along about *every fourteenth or fifteenth tub*, and when they came up out of the hold of the barge, the coal would be *all falling off of it*, and the other times, you could not see where the coal was in the bucket; once in a while you could see a big lump sticking out of the tub, and *none on the side*. I noticed on one occasion, I saw one weigher having trouble with the men shoveling coal into the tubs, *and he weighed ten tubs*. After he took the first *three* weights, I noticed that *the other seven* buckets were fuller than the first three tubs.

Q. To what extent?

A. To the extent that they came up out of the hold with the coal falling off of them.

Q. Do you recall whether upon those occasions you observed the character of the coal, as to whether it was lump coal or fine coal?

A. No, I don't.

Q. You do not recall.

A. No" (pp. 1156-7).

He is pressed further:

“Q. Upon those occasions, ordinarily, and without referring to any specific occasions, what did you observe regarding the quantity of coal that would be contained in the tubs that were weighed?

A. Well, the exact weight, I could not tell.

Q. I do not mean so far as the pounds or tons are concerned, but I mean as to what you observed regarding the quantity of coal in the tubs, how was the coal located upon the tubs?

A. Well, it always, at any rate *it rather looked* heaped up on the center, and that is the reason I always had the idea it rolled off the center of the tub.

Q. What would you ordinarily observe regarding the quantity of coal contained in these tubs which were *not weighed*?

A. *Well, sometimes you could see the coal in the tub, and sometimes you could not*” (pp. 1157-8).

We go, now, from these three government inspectors, with their occasional or casual observation, to the government representative on the scene, assigned to the transaction, the government weigher, Mr. Freund; and in association with him, to the man who was at his side, the representative of the interest chiefly concerned—Mr. Park, the weigher, or, more accurately, the tally clerk of the Pacific Mail Steamship Company. What is the testimony of Freund and Park?

Mr. Freund is asked:

“Q. I want you to go on and state to the jury what you have observed from time to time while you have acted as assistant weigher

upon those barges weighing draw-back coal so far as the filling of the tubs is concerned?

A. Well, I can state that it has been the usual thing to always have trouble; *the coal shovelers* if they knew you were going to weigh *would load the coal up to the hatch*, right up as high as they could on the tubs; I would holler down the hatch *to Mr. Parks*—he was always clerking as a rule with us—he *would kick about it* and then I would go over the hatch and tell them that *if they didn't quit it we would* make them. I have also spoke to the hatch-tender *and he has told them also*. I have had tubs come up that were loaded so that when they came out of the hatch, or when I came to the hatch—we had orders not to stand over the hatch; our orders from the chief weigher were to stand clear of the hatch and take the tubs at random, but when they knew I would weigh *I have seen them throw on 3 or 4 or 5 shovels of coal to fill it up* and I would let it go by, *I would not weigh it*.

Q. That is, upon occasions you have seen them put on 3 or 4 or 5 shovels of coal when they thought a tub was to be weighed?

A. Yes, sir.

Q. And you say that on some occasions you refused to weigh those tubs?

A. Yes, sir, I did; *I would let them go by*.

Q. Who determined when a weight was to be taken?

A. I would" (pp. 1176-7).

As to the number of tubs weighed at a time, and the time it took, Mr. Freund says:

"Q. What is your testimony as to whether the ordinary practice indulged in was to weigh a round of tubs instead of a tub at random?

A. Well, as I said, sometimes we weighed one, sometimes two in succession, sometimes three and sometimes four.

Q. Did you weigh a random tub as often as you would weigh a round of tubs, or would you weigh a round of tubs more frequently than you would weigh a random tub?

A. I guess I weighed about evenly; I have taken a round as often as I have taken it at random. It is entirely according to conditions.

Q. How long would it take to weigh a round of four tubs, where the tubs had to be weighed on the platform scales?

A. Three or four minutes.

Q. You say 3 or 4 minutes to weigh a round of tubs?

A. Yes, I should judge so.

Q. Did it require as much as 15 minutes?

A. No, I cannot say, unless it has been at times when the barge has a bad list, an inshore list, so that they cannot get the scale—they have to pull the tub out from the center of the hatch clear to the edge of the scale and if the barge listed inshore they could not pull it in, it would be hard work for them to get it over” (pp. 1179-1180).

Mr. Freund testifies further:

“Q. Upon occasions when you would notify the hatchtender that you wanted to weigh a round of tubs and a round of tubs would be weighed by you, what, if anything, did you observe the shovelers down in the hold of the barge doing with reference to the quantity of coal which would be contained in the tubs which you would be called upon to weigh?

A. Well, *on a few occasions* I have caught them *heaping* the tubs and *I would refuse to weigh them*. As a rule I have called them down pretty hard and threatened them that

I would ring up Mr. Mills or somebody and get a gang of men who would do as they were told; *as a rule they gave me pretty good weight.*

Q. Did you ever compel them *to remove coal from the tubs?*

A. Yes, sir.

Q. Was that a frequent occurrence?

A. No. *As a rule I would let the tub go up but refuse to weigh it.*

Q. How often after you would call for weights, would this additional quantity of coal be placed in the tubs?

A. Well, as a rule when I called for a weight I watched them pretty close, that they did not do it. If they didn't see me near the hatch, I wouldn't know whether they did or not. I have caught them once or twice.

Q. How often when you came to weigh tubs of coal would you notice that the tubs contained more coal than they should have contained, and you would direct the tubs to go up *and you would not weigh them*; how often did that occur?

A. I could not tell you; very often" (pp. 1179-1182).

Mr. Park tells, first, his position and duties:

"I am, by occupation, a tallyman and checker, and am now, and have been for about 31 years, employed in that capacity with the Pacific Mail Steamship Company. I have been tallying and checking coal which goes into the vessels of said steamship company at this port. My duties have been to see that the tubs of coal that go up are average tubs, kept even, and to see that the coal would not go overboard, and that it was weighed by the government weigher. I keep a record of the quantity of coal delivered" (pp. 1517-1518).

As to "the coal that is weighed and the coal that is not weighed, it is about an even thing; the tubs are kept as near correct, an average tub, as possible" (p. 1518). The weights are taken, one in fifteen. Like Mr. Freund, he says, "sometimes they would weigh one tub, and then wait until two or three tubs go up, and weigh another one, sometimes they will weigh two tubs at a time, provided that the tubs are average tubs—even—not overloaded" (p. 1519). And at times, when the barges stop,—the chute blocked up—four tubs would be weighed (p. 1537). Mr. Freund, it will be recalled, testified that very often he would send tubs up, without weighing them, because they had too much coal; and Mr. Park says the same thing—"Many times the tubs that are not weighed are heavier than those that are "weighed" (p. 1520). He says further:

"The custom-house officers know what coal is, and they have been at it all their lives; and they are remarkably fine men, I have not a word to say against one of them, everyone of them knew their duty, and I don't think I had a word with any of them. On many steamers we would never have a single word because they knew what they were doing perfectly well" (p. 1549).

And again:

"Nearly all the custom-house officers that I have had during my experience, that have been in the coal weighing for years,—I think know in a minute what an average tub is, and in case the tub is overloaded, they will send it up, or they will take lumps off of the tub

and throw it on the deck, if they consider it too heavy. They have done that many, many times, thrown coal right off on the deck, where it is piled up, and send it up, and don't weigh it" (p. 1533).

Sometimes, but only sometimes, the Western Fuel Company would be represented on the barges. Edward Smith would be the representative on those occasions. Mr. Park is then asked:

"Q. If Mr. Edward Smith was not there, did the Western Fuel Company have anyone representing it for the purpose of ascertaining the weight of these tubs and the weight of coal that had gone into the steamer?

A. Not if I was there and the custom-house officers were there" (p. 1523).

He was also asked as to Mr. Mills, what conversation he ever had with Mr. Mills.

"Well," Mr. Park answers, "Mr. Mills has told me a dozen times to have the tubs kept even, and that in case any coal went overboard—which sometimes it does owing to lumpy coal in the chutes blocking—that if any coal went overboard, to allow so many tubs, what I thought was correct, at the end of the day."

Mr. Parks speaks of the coaling of the "Korea", on the night of December 18, 1912,—the occasion, it will be remembered, when John W. Smith, and Enlow, accompanied by David Powers, were "investigating a little matter of smuggling". Mr. Finnegan was the government weigher from six o'clock to twelve; Mr. James Neelan, from one

o'clock until six in the morning (p. 1527). It is worth while, to hear how a good, honest man like Park, 66 years old (p. 1548)—government counsel thought he was seventy—holding the same position for 31 years, talks about the government weighers that were with him that night—

“I had one of the finest men on the force with me—I had two of them.”

It is the government counsel who is conducting this examination:

“Q. Who was that?

A. Mr. Finnigan was one of the finest on the force.

Q. And he is still on the force?

A. You bet he is.

Q. And he has been on for many years?

A. Yes, sir, and he is a cracker-jack.

Q. He is a cracker-jack, is he?

A. Yes.

Q. He knows how to weigh coal, does he?

A. You bet your life he does. I am very happy to say that the weighers I have had with me during my term with the Pacific Mail Company, were A.No.1 men. If they had not been, they would have been reported in about five minutes to Mr. Chisholm.

Q. Oh, Mr. Chisholm is your boss, is he?

A. Yes.

Q. He is another fine man, isn't he?

A. Well, I have nothing against him. I have found him right at the steamer, repeatedly, both in the day time and the night, and if anything was wrong I wouldn't be there five minutes.

Q. You always get along very agreeably with those weighers, don't you?

A. Yes, sir. Why shouldn't I? They did their duty, and I tried to do mine, and between us I don't think there was any trouble" (pp. 1555-6).

Now, then, Mr. Park says that, on this occasion of the "Korea", Mr. Finnigan would call for one bucket in fifteen—they were weighed with a fair degree of regularity—they were even, average tubs (pp. 1528-9). Mr. Neelan was on the morning shift, from one to six, at no time away from the place where the buckets were being hoisted (p. 1529).

Sometimes Park would make complaint to Mr. Freund, if he thought the bucket was over-filled, but this was not frequent, very seldom (pp. 1529-1530). As to overages in barge deliveries, "it was never reported to me" (p. 1558). "When a barge comes to the dock, I don't know the amount of coal that is in that barge until it is weighed. I am not told how much coal is in the barge, I don't know" (p. 1558). Mr. Mills complained to him on two or three occasions, that the barges were turning out short, and Mr. Park referred him to the weigher (p. 1559). Park was then asked:

"Q. He never told you anything at all about turning out overages?

A. He told me repeatedly to keep my tubs even, and that if any coal went overboard, to take as many tubs as I wanted to make the thing square" (p. 1560).

And finally, on this matter of complaints, he says there were only two instances of complaints

from Pacific Mail engineers, one from Mr. Bunker, and one from Mr. Hamilton, who thought they were "some coal short"; while Mr. Rossiter, chief engineer of the "Korea" "has told me repeatedly that he got his coal; he was taking three thousand tons every time" (pp. 1560-1561).

Mr. Park points out, what has been noted already, that "if the tubs are not loaded correctly, the engineer will have to hit them a tremendous blow, and break something in order to make them tip—a tub of average coal has to be very near even, before it will tip" (p. 1526). And again:

"They have got to be pretty full before they will dump; three quarter tubs won't dump.

Q. Even if coal is filled to the water line *at the mouth*, and is about two feet from the water line *at the back*, you say it won't tip?

A. Oh, they keep their tubs even."

This last was certainly a question "fetched from far". The examination goes on:

"Q. I am assuming that they are kept even. Suppose we experiment with the tubs, as we did the other day, if a tub is filled to the water line *at the mouth*, and within two feet *at the rear*, won't that tub invariably tip on account of the superabundant weight at the front or mouth of the tub?

A. *I have never seen a tub filled that way.*

Q. Wouldn't that tub fill that way?

A. *I have never seen a tub filled that way; they have got to be full before they tip, unless you break something, or try to kill somebody down in the hold, or capsize the tub of coal into the hold"* (pp. 1562-3).

Mr. Park and the trial judge were evidently of one mind on the point, for Mr. McCutchen, at the trial, referring to a visit of court and jury to the scene of the barge deliveries, had taken occasion to say:

“Your honor and the jury didn’t make the measurements the other day; we want to show by the witness (Professor Parr) that a tub that is so empty that a witness could see into it one foot, could not actually be dumped.

The COURT. Didn’t we see that ourselves, and find out that we had to smash things to do it” (p. 1632).

The rough and approximate process of handling coal from a barge to a steamship, is illustrated in the testimony of Mr. Park, not merely by the disparity, as in the testimony of other witnesses between weighed and unweighed tubs, but in the disparity of the weighed tubs themselves, of the same weighed tub—the tubs being numbered 1, 2, 3, 4,—from occasion to occasion. For example, Mr. Park’s entries show that the weights of tub No. 1, from time to time, ran 2300 tons, 2280, 2220, 2230, 2200, 2010; No. 2 tub ran: 2100, 2120, 2180, 2150, 2120, 2140, 2190; No. 3 ran: 2120, 2100, 2270, 2170, 2190, 2100, 2164; No. 4 ran: 2020, 2040, 2230, 2210, 2180, 2100, 2160.

To take a particular period and occasion—the transfer of coal to the steamer “Korea”, June 28, 1911. No. 1 tub ran: 1550 tons, 1550, 1580, 1570, 1540, 1580; No. 2 ran: 1590, 1500, 1600, 1630, 1650,

1560; No. 3 ran: 1720, 1660, 1700, 1750, 1670; No. 4 ran: 1620, 1620, 1680, 1670, 1630, 1660 (p. 1524).

There would be 250 pounds difference in two tubs—the coal would differ, wing, coal, light, lumpy (p. 1525). The discrepancy in the same tub would be 250 pounds, 160 pounds, and so on (see, also, pages 1532-3); the fine coal making more weight than the lump coal (pp. 1525-6). It is not a frequent thing, it is infrequent, for tubs on different occasions to weigh the same number of pounds (p. 1556). Some reference was made on cross-examination of Mr. Park, to the tare or dead-weight of the tubs as being entered in his book at different figures, 615 pounds to a tub at one time, 630, at another, for example (pp. 1543-4). Mr. Park explains this:

“We often on those barges, change the tubs. They break down, and in the hurry, they send another tub. Sometimes they have extra tubs on the barges; and sometimes they have not; they have to send down to the bunkers for them” (p. 1546).

The increase or overage in the weight of the coal when transferred from the barge to the steamship, due to moisture, noted already in the testimony of the witnesses, Edward Powers, Frank Wilson, Arthur O’Leary, is also testified to by Mr. Park. “If the coal is very dry, the crew of the steamer, and also the trimmer, has it wetted down so as to keep the dust from flying” (p. 1518). Speaking of the winter-time, he says:

“These steamers are coaled in rainy weather, as well as in fair weather—the barges are nearly all open from stem to stern, so that the coal is exposed to the weather” (pp. 1518-1519).

Q. Have you ever seen coal being laden into the Pacific Mail steamers that contained considerable moisture?

A. Yes, sir, many times.

Q. Due to what cause, so far as you yourself observed, how did it get wet?

A. Well, we have had barges that have laid in the stream, some of them two months, and they have been exposed to the elements and the rain, and when we would get them, the water would run out of every tub—they would be wet from the top of the coal to the bottom of the barge.

Q. Will you state whether or not, in weighing this coal, any allowance was made by the custom-house weighers on account of moisture in the coal?

A. None whatever” (p. 1520).

He says, further, recalling to us the testimony of Edward Powers:

“I have repeatedly seen the coal hosed down by employees of the Pacific Mail Steamship Company. That would occur when the coal is dry and would spoil the paint on the ship and interfere with the trimming. They generally use an ordinary ship’s hose. They would play the water on the coal for quite a while until it got pretty wet to keep the dust down. *I have called Mr. Chisholm’s attention to that matter often, but it had to be continued for the reasons mentioned. I have repeatedly tried to get a reduction for the water from the government, but the answer I always got was that the government made no allowance for water.*

Mr. Chisholm knows that that is the situation"
(p. 1563).

The government bulletin, being Bulletin 63, of the United States Bureau of Mines, entitled, "Sampling Coal Deliveries, and Types of Government Specifications for the Purchase of Coal", under the heading—"Practical Considerations; Moisture"—was put in evidence (pp. 2093-7). It appears from this bulletin that the government made payment for its delivered coal, with direct reference to the moisture content:

"Payment for delivered coal," it is said, "was directly affected by the moisture content of the sample received by the laboratory" (p. 2093).

And further:

"From experiments that have been made, and from a large mass of data, it is known that the moisture content of coal does not remain constant, and that the moisture content reported by the laboratory may be as much as five to ten per cent lower than that actually contained in excessively wet or high-moisture coal at the time of weighing" (p. 2094).

The government bulletin makes some interesting statements, quite pertinent and instructive. We quote:

"If coal of uniform B. t. u. 'dry coal' value is delivered on a contract, the contractor receives the advantage on any delivery in which the moisture content approaches the maximum specified, because he is paid for the weight of water contained in the coal in excess of a normal amount, whereas if the coal is very dry,

containing less than the normal amount of moisture, the purchaser receives the advantage.

“For example, coal is delivered under a contract in which the standards are 14,300 B. t. u. per pound of ‘dry coal’ and a maximum moisture content of 3.5 per cent. The heating value of a ton (2240 pounds) of ‘dry coal’ would be 32,032,000 B. t. u. Assume that the average moisture content of deliveries for a year is 2.5 per cent, then for every 2240 pounds of ‘dry coal’ having a heating value of 32,032,000 B. t. u., the purchaser is required to pay for 56 pounds of water at the same rate per ton as for ‘dry coal’, but as this percentage of moisture in average deliveries is inherently a constituent of the coal, it is considered as part and parcel of the coal by both the purchaser and the seller. If the coal delivered contains 3.5 per cent moisture, to procure 32,032,000 B. t. u., ‘dry coal’, the purchaser has to pay 1 per cent more for coal because of the excess water above the normal amount, whereas, if the coal contains 1.5 per cent moisture, the purchaser pays 1 per cent less for water. As the variations in moisture content, 1.5 or 3.5 per cent, are largely accidental, the season of the year being partly responsible for them, it is equitable that the purchaser and seller should share the uncertainty. The purchaser justly has a right, however, to demand that the seller shall guarantee a maximum moisture content, as a means of enabling the purchaser to compare one coal with another, as a guarantee that the seller will observe precautions against delivering coal that is unduly wet, and as a basis for adjusting the price of exceptionally wet coal” (pp. 2094-5).

If we substitute for "a car of coal in transit", such an open barge as Mr. Park and the other witnesses speak of, the following excerpt from the government bulletin will be seen to be illustrative:

"As an example of the effect of a heavy rain on a car of coal in transit, a precipitation of 3 inches of water on a loaded 50-ton car, area of top about 360 square feet, would increase the weight of the coal 5.01 per cent, provided none of the water drained out or evaporated. It is obvious that *if this coal is weighed and delivered immediately*, special samples for moisture determinations should be collected and prepared at once and sent to the laboratory, as a basis for equitable adjustment of payment on account of the excessive amount of water in the coal" (pp. 2095-2096).

And speaking of coal piled in stock and exposed to the weather, this government publication says:

"The determination of the moisture of coal delivered from stock piles is often of great importance, for the proportion of moisture contained in the small sizes, which are most abundant near the center of a stock pile, and which absorb the rains, and melting snows in districts of heavy snows, may be from ten to fifteen per cent higher than *when* stocked. It is apparent, therefore, that special moisture sample determinations are necessary for equitable adjustment of payment on account of excessive moisture in coal which is stocked in piles exposed to the weather" (pp. 2096-7).

We have now given the court the testimony of the government representative Mr. Freund, in respect to the process of transferring the coal from

the open barge to the steamship's hold. He was there in the interest of the government, for the government was paying draw-backs on that coal. We have also given the court the testimony of the steamship company's representative Mr. Park. He was there in the much larger interest of the steamship company, which was paying, not merely a tax of sixty-seven or forty-five cents a ton, but a purchase price, figured in the government exhibits at \$7.00 a ton, and in no event being less than, say, \$6.50 a ton (p. 493). The process itself as brought out by these two witnesses, was inherently approximative, it was not a weighing process at all as to most of the buckets, it was a matter of comparison and estimate, with all the circumstances of the process making for an excess quantity in the weighed buckets, and as to the weighed buckets themselves, they varied from one bucket to another as much as 250 pounds. In addition, this delivered coal, on the occasion and at the time of delivery, was wetted down, saturated with moisture, and, of consequence, increased in weight; and to this point the testimony of Park, Edward Powers, Frank Wilson, and Arthur O'Leary—wherever there is oral testimony in the case—is strikingly corroborated by the government bulletin.

It only remains to consider the testimony of the Mail Company's engineers, and our review of the transfer of coal from the barges—the deliveries to the steamships—will have been complete. Two of the engineers testified, Mr. Bunker, whose name has been mentioned in connection with a complaint,

and Mr. Sawdon; also Mr. Chisholm, who had been a steamship engineer until he became marine superintendent at San Francisco. These witnesses were called by the government.

Mr. Bunker, who was not in the service of the Mail Company at the time of testifying, had been chief engineer for about six years, making five voyages a year, about thirty-six in all. He had been chief engineer of the "Manchuria", his first large boat. He explains her coal bunkers, the main bunkers including the reserve bunkers. The main bunkers were three—the after main bunker, the forward main bunker, and the reserve bunker; each bunker being divided into decks. This appears on the blue print, which all chief engineers have in their room (pp. 1074-5). The aft-bunker, speaking of the "Manchuria", has a capacity of 969 tons, as also the forward bunker; the reserve bunker takes 1150 tons in the hold, and 575 on the deck above. These figures are based on so many cubic feet to the ton; "some take it at 42, and some at 43; naturally I took it at 43" (p. 1075). Bunker wanted all the coal he could get, evidently.

"I recall," he says, "finding a shortage in the coal, there was one occasion when I wrote a letter about it, namely, Voyage 18" (p. 1075).

He makes the general situation, and his own attitude and policy, frankly clear:

"Q. Had you upon other occasions made complaints regarding alleged shortages in coal?

A. Well, I don't remember of ever making them officially any more than to always kick for more coal, *sometimes when I was not sure of it, but on general principles*. I was working for the Pacific Mail, and *if I even had a suspicion that we were short of coal I didn't lose any chance to register a kick about it*.

"Most of my complaints were made to Powers, who was the weigher for the company. On a few occasions I complained to Chisholm, the marine superintendent. I complained more than once to Eddie Powers. He was the outside man for them and, of course, I used to tell him I thought the weights were not right. I do not remember making a personal complaint to the defendant Mills. I told him several times that I thought his coal was 'bum', and that it was short on weight. Mills on such occasions told me that the government weighed the coal, and what could he do about it. I do not remember his saying anything else on such occasions" (pp. 1075-6).

Bunker's complaint in respect to Voyage 18, is in a letter of January 29, 1909, written by him from Honolulu to Mr. Chisholm (pp. 1078-9). He writes:

"Have weighed samples of the coal supplied in S. F. and find it runs 41 cubic feet per ton (when allowed to partly dry out); by allowing this average, we are still 123 tons short. This shortage I have charged to port consumption at S. F. making 309 tons in place of 186 tons as actually burned.

"I recall writing that letter," says Mr. Bunker. "Before Voyage 18 I had made complaints regarding shortages of coal only in a general way, personal complaints to Powers and to Chisholm, etc. I should say it was

several voyages before that, that I talked to Chisholm; he would talk the matter over with me, and wanted to know if I had any suggestion to make *where we could do better*" (p. 1079). Bunker explains how "I arrived at the 123 tons shortage on this Voyage 18, concerning which I wrote to Mr. Chisholm—I weighed the coal in a tub, and got the weight per cubic foot *as near as I could*, then I computed the amount in the bunkers at that weight" (p. 1080). "I simply measured it, and weighed it on steel yards that we carried on board, I did not make any further investigations for the purpose of determining whether or not there was a shortage at the time I burned the coal" (p. 1080). He adds: "After Voyage 18, I did not make any more accurate measurements of my coal for the purpose of finding out whether there were any shortages. I had the coal distributed through the various bunkers, and therefore it would be impossible to tell to a ton just what was put in the bunkers. I do not remember making any more complaints to Chisholm, except talking in a general way" (pp. 1080-1081).

After Voyage 18, Bunker made arrangements to do most of his coaling in the Orient, and on the last two voyages, took no coal at San Francisco (p. 1081). The point was, in using Japanese coal:

"I could get more heat units out of it than I did out of the Western Fuel Company's coal, it was a better quality";

and the Japanese coal was delivered on estimated weight, whether by draught of the barges, Bunker could not say; and when asked if he had occasion to insist

“upon additional weights there frequently, I would say I never gave the Mail Company any the worst of it” (p. 1095).

Bunker was frank enough, certainly. He is asked:

“Q. Is it not the fact that the complaint or suggestions which you had to make concerning the coal here bore more on the quality of the coal than the quantity of the coal?

A. Well, I suppose of the two the quality had more to do with it or as much to do with it as the quantity, or more so, but I could not kick about the quality but I could kick about the quantity.

Q. You knew that the Western Fuel Company was giving you whatever quality coal it had, and yet it was not satisfactory to you as a matter of fact, was it?

A. That is the idea.

Q. You felt you were not getting the proper amount of heat units out of it that you could get out of other coal; was not that the fact?

A. Yes, sir.

Q. And naturally it was not as satisfactory to you for that reason as an engineer, was it?

A. I would not say it was entirely due to the quality here. The quality had a good deal to do with it, but I also felt that it was more or less short on the quantity and I made sure to report it.

Q. And so you made this written report that has been put in evidence here?

A. Yes, sir.

Q. It is not an unusual thing, is it, Mr. Bunker, for engineers who have at heart the welfare of their employer, to register a protest against the quantity of coal that steamers have

received all over the world at every coaling port?

A. *Well, I expect I would do it if I thought I could get more coal by it.*

Q. And that is so virtually at any port at which any of your vessels coaled?

A. I don't know what the other engineers do, Mr. Knight; *I know what I did*" (pp. 1093-4).

And speaking of 43 cubic feet as against 42, Bunker says:

"I know when I figured the bunkers out, I am almost sure I figured them at 43, in order to get as little coal charged for as possible to fill the bunker.

Q. In order to make the quantity large for as small a cost as possible?

A. Yes, sir" (p. 1084).

Bunker's methods of estimating his coal cargo did not produce exact figures:

"I could not tell you the exact figures, but there was quite a lot on the top of the deck, that I had the Chinamen, when I got to sea, level off to four feet in height, and square it off, so that I could measure it off and get the cubical contents of the pile.

Q. And that is the method by which you estimated the cubical contents of the particular pile of coal?

A. Yes, sir.

Q. And that is the method by which you estimated the entire amount of coal cargo you had taken on board?

A. That is the only way I could get at it without weighing it off" (pp. 1085-6).

And further:

“Q. But it would be rather difficult, would it not, Mr. Bunker, unless we adopted some particular method of measuring the coal, to determine with any degree of accuracy the amount of coal in the ‘Manchuria’, if she was at all well loaded with coal?

A. Yes, certainly. I only measured this, as I believe I said before, as best I could, to be sure, of course, that the Pacific Mail was not getting the worst of it.

Q. Otherwise you feel it would be impossible to determine with any degree of accuracy, how much coal was put on a vessel?

A. *Well, I would not like to say I was very close to it; it was the best of my judgment*” (p. 1089).

And finally, Bunker has no difficulty as to the moisture in his coal:

“I presume,” he says, “it must have been more or less wet in going in” (p. 1087).

So much for Mr. Bunker, for Voyage 18 and his complaint about it, and for his policy as to complaints generally. Now, for the other engineer, Mr. Sawdon.

Mr. Sawdon has been for some 26 years, marine engineer with the Pacific Mail Steamship Company, serving, as chief engineer of the “Mongolia” for four years of the time, from 1906 to 1910 (p. 1146).

The “Mongolia” and “Manchuria” are sister ships. As chief engineer of the “Mongolia”, Sawdon had in his room a blue print showing the dimensions and capacity of the the ship’s bunkers.

The "Mongolia" would take on at San Francisco from 2500 to 2800 tons of coal.

"When I was chief engineer on the 'Mongolia', I kept myself advised concerning the capacity of the coal bunkers, I would go in them every day" (p. 1147).

The bunker capacity is figured at 42, not Bunker's 43 cubic feet to the ton (p. 1147). Mr. Sardon now tells us:

"After the 'Mongolia' had been coaled in San Francisco, I would make an examination of the bunkers into which the coal had been discharged. I had to O.K. the bills that were presented by the Western Fuel Company. I would be a funny engineer not to examine my bunkers to see how much coal I had before I left San Francisco. I certainly examined the bunkers for the purpose of enabling me to pass intelligently upon the bills of the Western Fuel Company. I always went through the bunkers, therefore, when they finished coaling. I would thus find out to what extent the bunkers were filled, so far as it was possible to gain that information. So far as the broken bunkers were concerned, I would know pretty close to the amount of coal that was already in them before the Western Fuel Company started to discharge coal into them. I would know to within 15 or 25 tons. When the Western Fuel Company finished the coaling, I would again examine the bunkers as soon as I could go through the manhole to look around" (pp. 1147-8).

Government counsel puts this question:

"Q. During the period of time to which you have referred, these four years, while the 'Mongolia' was being coaled from time to time

at the port of San Francisco, state whether you noticed at any time a shortage in the quantity of coal supplied to your ship by the Western Fuel Company, as tested, between the quantity of coal which you found to be upon the ship and the bill presented by the Western Fuel Company for your O.K.?

A. The amount that they discharged into the ship, that is what I am trying to get at; where we take the bunkers at 42 feet and the man tells me that the coal is running heavy, 39 cubic feet, $28\frac{1}{2}$, it goes to show that between the weights *I had no kick about it*; in other words, if the coal was running 42 feet, as we would take the bunker capacity, it would show a shortage of coal.

Mr. ROCHE. Q. In ascertaining whether there was or was not a shortage, would you take the cubic feet contained in a ton of coal as specified in your blue-print and plans?

A. Would I take it?

Q. Would you take 42 cubic feet to be contained in the ordinary ton of coal?

A. That is what we were going by; *that is what we went by on the ship*.

Q. Assuming that there were 42 cubic feet of coal in a ton, upon these occasions to which you have referred was there or was there not a shortage in the coal?

The COURT. He has said there was on that assumption, *and he has further said inferentially that if he took the statement of Mr. Park, or the other gentlemen, that the coal was running heavy at 39 feet, that there was not*.

Mr. ROCHE. Very well. Your honor is correct in that statement.

The COURT. Yes'' (pp. 1148-9).

Indeed, the measurement of coal in bunker is misleading. The coal drops, on transfer from barge to bunker, some 70 to 80 feet (p. 2091).

“The bituminous coals that the Western Fuel Company furnish to the Pacific Mail Steamship Company, would be greatly broken up and closely packed in the course of this drop—in other words, the measurement of the coal in that bunker would be misleading as to weight because it would be packed so hard and firm after this long drop” (p. 2091).

Mr. Sawdon never made a calculation “for the purpose of determining whether there was or was not a shortage of coal on board”, after leaving San Francisco and while the boat was consuming coal (p. 1151).

The government also examined Mr. Sawdon as to the unweighed and the weighed tubs. He would stop and watch the operation for ten or fifteen minutes at a time, at a distance of 30 to 40 feet from the point where the buckets were tripped (p. 1150). He says:

“If I watched closely I could see the tub or bucket as it was being hoisted. The bucket, however, was travelling right fast, you know. In answer to the question whether I upon occasions watched the buckets, I would say that I have for a short time. I have taken a look on many occasions, and in connection with different voyages. Sometimes I have observed weights being taken, and I would notice the tubs which were weighed as they were being hoisted up from the scales. I would notice then that the tubs that were weighed were quite full. There would be more coal, as a general thing, in those tubs than in the tubs that were hoisted and were not weighed. I would say that the ordinary

tub, that is to say, the unweighed tub, *would be run on water measure*, by which I mean *that it would be full to level*. The other tubs, that is the weighed tubs would be *rounded up a little*, and there would be *a little more coal in them*. That is the way it appeared to me" (pp. 1150-1).

There remains William Chisholm, for something like seven years marine superintendent of the Pacific Mail Steamship Company, and prior thereto chief engineer of the "Mongolia".

"It is part of my duty to see and to know that the weights for which the Pacific Mail Steamship Company pays the Western Fuel Company are correct" (pp. 436, 440-441).

Mr. Chisholm received two complaints of shortage in deliveries, one from Bunker, of which we have spoken, and one from an engineer named Hamilton. The Bunker complaint, as we have seen, was in 1909, the Hamilton complaint in 1911 or 1912 (p. 442). Mr. Chisholm says:

"After receiving the reports that the Pacific Mail Steamship Company was not receiving full weight on the deliveries of coal to its liners I made certain investigations. I could not find any proof that we were short, and, of course, it was my duty to know whether we were short or not. I watched the operations of the barges very closely, and I also looked over the performance of our ships to see whether they were running short of coal in any way. I would examine, for instance, the log sheet of the ship, which shows the consumption of coal on each voyage, and also shows the quantity of coal delivered to the ships and the quantity that was in the ship's

bunkers before the voyage began. My experience was such as to enable me to tell about what the consumption of coal on a given voyage would be. Using all of that information, and making the investigation which I have said I did make, I reached the conclusion that the Pacific Mail Steamship Company was not paying for any more coal than it was actually receiving" (pp. 442-443).

Mr. Chisholm further testifies:

"During the time that I have been marine superintendent of the Pacific Mail Steamship Company the company has had in commission 17 or 20 liners. Four are large steamers, three intermediate size ships, and about fourteen small ones. Of that entire number about four large liners have bunkers so situated that the contents can be ascertained after the ship has coaled. Those four large ships have made on the average four and a half voyages a year during the time I have been marine superintendent. That would be in five years approximately 22 voyages for each of those four steamers, or 88 voyages in the aggregate. I have received in all those 88 voyages 2 complaints with reference to the deliveries of coal to the steamers by the Western Fuel Company" (pp. 458-9).

He says, further:

"I have said that with the exception of the reserve bunker on the 'Mongolia' and 'Manchuria', those large steamers have their bunkers so placed that the chief engineer can measure the coal in the bunkers after the loading is complete. The capacity of the reserve bunker is known. It ought to be quite easy to tell after the coaling operation is completed whether or not the reserve bunker has been filled to its capacity. Therefore, *know-*

ing the capacity of the reserve bunker, and so being able to tell whether it has been loaded to its capacity, and it being possible to get at the other bunkers on those ships, there is no difficulty whatever in an engineer being able to determine the amount of coal that he has on hand before his ship sails. If there had been a system of short-weighing pursued in the delivery of coal to the smaller steamers there would, during all the time I have been marine superintendent, have been no difficulty in discovering that fact” (p. 459).

And again:

“Q. Now, you have said that the capacities of these steamers which you have designated as ‘medium size’ and ‘small’ is ascertainable easily. Let me ask you whether you ever received any complaint during the five years that you were marine superintendent of the Pacific Mail Steamship Company from any captain of one of those medium-sized or small steamers, as to the quantity of coal delivered to the steamer?

A. No.

Q. You never did?

A. No.

Q. Did you ever receive any such complaint from the chief engineer of any one of those medium-sized or small boats?

A. No” (pp. 461-2).

Over and above the two complaints from the big ships, Bunker on the “Manchuria” and Hamilton on the “Siberia”, we have something by way of insinuation—“indirectly,” says Mr. Chisholm, “I have been notified, as marine superintendent, that the coal was being over-weighed” (p. 441). The government counsel continues the inquiry:

“Q. So that the indirect notices which you received from time to time, related to a general over-weighing of coal, isn't that correct, and not to specific instances?

A. I received, I think, on two occasions, one or two occasions, indirectly an *insinuation* that we were getting a short amount of coal on our ships” (p. 456).

We are not long waiting for the source of the insinuation. Government counsel continues:

“Q. You say that you received directly——

A. (Intg.) Indirectly. It was an indirect insinuation, it was an insinuation that we were getting a short amount of coal.

Q. Isn't it a fact that you received a direct statement from David S. Powers, to the effect that the Pacific Mail Steamship Company was being over-weighed upon coal?

A. Not directly.

Q. What do you mean by ‘not directly’?

A. When David Powers came out of jail he came to me *to appeal for his father and himself to coal our steamers*. He was down seeing me on one or two occasions; that is, I should judge, in 1912, after he got out of Alameda County Jail. I told Mr. Powers the last time, I says, ‘*You put yourself on record.*’ He told me that he could, if him and his father could get the coaling back, that he would save the Pacific Mail Company a great deal of money, and he would get more coal in the bunkers than at the present time was getting in.

Q. When was that?

A. That was, I should judge, around, shortly before the indictment of Mr. Donaldson, around, I should judge, in August.

Q. August of what year?

A. I think last year.

Q. Now, he did tell you—you don't mean the present year?

A. No, 1912.

Q. So that you were told at that time, were you not, by him, that there had been overweighing of coal?

A. Not directly. When I put the question to him directly for his information, he said, 'Well', *he shrugged his shoulders and walked away*" (pp. 456-7).

The second phase of insinuation, like the first, is barren of facts, and likewise goes to the Powers family for its source, this time to Edward Powers. Mr. Chisholm is asked:

"Q. From what other sources did you indirectly receive information that there was a general overweighing of coal?

A. That same year, I should judge it was, around about the spring, his brother, Eddie, came to me and wanted *to get his father back in the coaling business*, that is, *trimming the coal*, and he intimated, *he did not come right out directly*, and when I told him, I says, 'What have you to show for this'? he says, 'Well, if we get our coaling back, if we could get coaling our ships, or your ships, we could save you a whole lot of money, on the storage of coal.'

Q. That was in the early part of 1912; is that correct?

A. No, I don't remember exactly when it was; it was shortly, I should judge, before Dave was down there.

Q. Now, after having received those two communications to which you have referred, the written communications, and these indirect charges that the coal was being overweighed, did you at any time attempt to find out at what weight the coal was laden *into* the barges?

A. No" (pp. 457-8).

We call attention to the last clause in this last question—"At what weight the coal was laden *into* the barges." We have quoted fully from Mr. Chisholm as to his investigations and conclusions touching the question whether "the Pacific Mail Steamship Company was not paying for any more coal than it was actually receiving". That was the thing that Mr. Chisholm, like Mr. Park, was interested in—the quantity of coal actually delivered, not *into* the barge at the Folsom Street bunkers or elsewhere, but *out of* the barge, into the steamship at the mail dock. This last question does not invite him to renew his testimony as to his investigations concerning these actual deliveries out of the barge.

Now, for the two specific instances, namely, Bunker and Hamilton. It will be remembered that Bunker, in his letter of January 29, 1909, reported a shortage of 123 tons, and this shortage he "charged to port consumption at S. F., making 309 tons in place of 186 tons, as actually burned" (p. 455).

Mr. Chisholm testifies:

"Q. The letter from Chief Engineer Bunker, which has been called to your attention, says, among other things, 'this shortage I have charged to port consumption at San Francisco, making 309 tons, in place of 186 tons as actually burned'—did you make any investigation, after receiving that communication, for the purpose of determining how the port consumption which the chief engineer refers to in his letter, compared with his port consumption ordinarily?

A. Yes.

Q. Did you make any investigations to determine what his port consumption should have been for the time he was in port on that occasion?

A. Yes.

Q. What did you determine that he should properly have consumed in port during that time?

A. 225.

Q. 225 tons?

A. Yes.

Q. Then you don't think he could have possibly got along with 186 tons during his stay in port on that occasion?

A. No.

Q. Assuming that he had reported 225 tons as his port consumption during that stay, would not that consumption have been exceedingly small for the time he was in port?

A. The 225?

Q. Yes?

A. No, it would be about right.

Q. It would be about right?

A. Yes'' (pp. 459-460).

It thus appears that Bunker charged only 186 tons to the port, when he should have charged 225, or 39 tons more. The shortage, therefore, of 123 tons, charged not to the port but to the voyage, should be abated by 39 tons, for which the voyage was not responsible—leaving a balance of shortage chargeable to the voyage on Bunker's very liberal methods, including his 43 cubic feet to the ton, of only 84 tons.

This is not all in respect to Bunker's voyage 18. Mr. Chisholm was asked:

“Q. Did you make any investigation, after receiving that complaint, to determine how Chief Engineer Bunker’s consumption of coal on that voyage compared with his consumption of coal on other voyages?

A. Yes.

Q. What was the result of that investigation?

A. The voyage was lower than the previous voyage.

Mr. McCUTCHEN. That is to say, according to the log of Captain Bunker on that voyage on which he complained of having been short-weighted, he made a better record than he had ever made before on any previous voyage.

A. Yes.

Q. That is to say, his consumption of coal was less per mile than on any voyage he had previously made?

A. The gross amount of coal, the total amount of coal he received during that voyage, was less.

Q. The total amount of coal he received during that voyage was less?

A. Yes.

Q. Did he get all of his coal for that voyage at San Francisco?

A. No.

Q. Where else did he get coal?

A. Nagasaki, I think, and I don’t know if he took any at Honolulu or not.

Q. At any rate, when he returned here, he reported to you the coal which he had received at foreign ports?

A. Yes.

Q. And you took that into account in reaching the conclusion which you have announced here, that he had made a better record on that voyage than he ever had made during any previous or subsequent voyages?

A. Yes” (pp. 460-461).

As to the Hamilton complaint: The Hamilton letter relates to the "Siberia", and was written January 31, 1910, from Honolulu—about one-sixth of the trans-Pacific voyage from San Francisco (pp. 453-4). The letter is set out in the transcript (p. 444). It deals, not with a shortage of quantity, as we have been viewing such a shortage, but with an overage from moisture that "went in with the coal". We quote from the letter:

"Our average daily consumption was 160 tons, but I have to log 7 *tons per day more* to bring the bunkers square, *as from the amount we were charged with fully 100 tons of rain water went in with the coal*" (p. 444).

We have shown, over and over again,—the matter is not in dispute—that it was the Pacific Mail employees themselves, ships' men or trimmers', who poured water into the coal, wherever "rain water" was not present in sufficient quantities for saturation. The wetting of the barge coal was inherent in the operation, there was no way of stopping it. Mr. Chisholm asked:

"Q. Now, getting back to this complaint or this communication as it was referred to by Mr. McCutchen, signed by J. S. Hamilton, on the 31st day of January, 1910, you, of course, read that language, did you not, which is contained in this letter in which it is said: 'Our average daily consumption was 168 tons, but I have to log 7 tons per day more to bring the bunkers square, as from the amount we were charged with fully 100 tons of rainwater went into the coal.' Of course, as marine superintendent of the Pacific Mail Steamship Company

you did not intend to permit your employers to pay for rainwater, did you?

A. I don't see how we could stop it.

Mr. ROCHE. Q. Well did you, after receiving this document which Mr. McCutchen designates as a communication and which I designate as a complaint, make any complaint to the Western Fuel Company seeking a return of that portion of the money paid to it representing the 100 tons of rain water?

A. I respectfully referred that to our manager who handles those cases" (p. 452).

Mr. Chisholm's testimony brings to a close the examination of this record touching the transfer of coal from the barges. We have considered this record at great length, tediously it may well be, exhaustively, fairly and frankly. It has been a painstaking and irksome task for counsel; it will not be a light task for this court to go over what counsel have laboriously examined and presented. But there is a grave duty here, imposed upon counsel and imposed upon the court, where the liberty and the personal honor of the citizen are at stake; and however searching and tedious our inquest into the testimony may have been, we venture to think, in presence of a record as voluminous as this, that our study of the case will be a real help to the court. We have considered the business and process of coaling steamships from barges—the inherent character of such a business, the commodity it deals with, the methods of handling that commodity in the haste and stress of coaling steamships ready for sea, the government regulations, drawn in recognition of

the rough and approximative nature of the process, and accordingly adapted to the methods pursued; the conditions of filling and loading the buckets, as between the buckets that were weighed and the buckets that were not weighed, and the saturation of the coal at the time of delivery. We have seen that the weight ascribed to the coal that went *into* the barges was registered on a rising beam—the weight of the coal that went *out of* the barges was recorded on an even beam. We have seen that screenings and yard coal, from time to time, went unweighed into the pockets of the bunkers, and thence into the barges, and we have learned the reason why—because the barges were, in effect, floating warehouses, and it was important to Mr. Mills to know, in a general and approximative way only, the quantity of coal distributed among his barges, to the end that he might make his assignments of barge to steamship accordingly, and hence it was that the entries in the Mills blotter were, in a sense, misleading, made roughly and inartificially, and requiring correction and abatement in the percentages expressive of overage. We have examined the testimony of the men who actually handled the coal out of the barges—shovelers, hatch-tenders, general foreman, trimmer; we have examined the testimony of the representatives of the parties in interest—of the government weigher representing the government, with its incidental interest in the draw-backs, of the Pacific Mail Company's tally-clerk, representing the principal and large interest, the inter-

est of the purchaser of the coal; and we have examined the testimony of the steamship engineers and of the marine superintendent. We have seen that the overage from the barges, year in and year out, for all the years, 1904 to 1912, was, in its maximum expression, 4.99 per cent. We have shown from the overwhelming testimony, testimony not simply consistent with the absence of any conspiracy to defraud, but inconsistent with the hypothesis of such conspiracy, that the overage resulted from conditions in the handling and transfer of the commodity, that were inherent, characteristic, and inevitable. Regardless, now, of the conspiracy charged in the indictment, this evidence puts it beyond all reasonable doubting that there was no conspiracy on the part of these defendants to defraud the Pacific Mail Steamship Company, or, from any point of view, to defraud the government. Their conviction was a miscarriage of justice. They are entitled to a fair trial, and that means a new trial.

OVERTIME AND DONATION ACCOUNT.

We have now completed the review of the case, except for two matters thrown in, not as any substantial evidence, but apparently to excite some sort of suspicion—the payment of overtime to the weighers, and the donation account.

As to the overtime: The Western Fuel Company, like every other importer, had been in the habit of paying the weighers a dollar an hour overtime, when they worked at night, to save demurrage and get a

speedy discharge of the vessel, or, as the case might be, a speedy delivery from the barge in case of a steamer ready to put out to sea. Mr. Mayer was asked:

“Q. About the overtime of the custom-house officers, Mr. Mayer—a fact that all the big importers down on the front, whether they were coal dealers or not, when they had to do work at night, like getting out freight for the East, perishable freight, and where it meant a great deal to them to work at night, whether or not they paid the custom-house officers too?

A. Ever since I remember on the front, custom-house officers were paid for overtime.

Q. And is that a fact as to all the big concerns in business down there—in so far as you know—whether in the coal business or any other kind of business?

A. Yes, sir, so far as I know” (pp. 2030-31).

“I can name parties,” he continues, “who paid overtime to weighers between the years 1906 and 1912; for example, Taylors, who are large importers, and the Pacific Coast Coal Company. I do not know of any other persons of my own knowledge, but the weighers told me, that is where my information comes from. I know all the people interested in the coal business paid overtime to the weighers between 1906 and 1912, but I cannot mention any more names” (p. 2032).

He paid a dollar an hour overtime, noted the payment, and gave it to the timekeeper, who entered it in his book (pp. 2022-3). This thing ran back to the time of Rosenfeld Sons, before the Western Fuel Company came into existence—“they all do it, John Rosenfeld Sons, Dunsmuir, the Pacific Coast Coal Company, everybody did” (p. 2025). An at-

tempt was made at this point to give color to the examination, but the court rebuked it. This question was put to Mayer:

“Q. They all *tip* them, do they?

A. They don't tip them; they pay them for their labor.

Mr. McCUTCHEN. I submit that that is improper, if your honor please.

Mr. SULLIVAN. That was the witness' testimony, I submit, if your honor please.

The COURT. I know, but it doesn't help anything to characterize it as tipping a weigher. The witness has testified to what was done.

Mr. SULLIVAN. All right, your honor” (pp. 2025-6).

Bud Hopkins, the timekeeper, says that between June, 1907, and January, 1911, “possibly between \$250 and \$300 a year was paid for overtime to the assistant custom weighers”. For one period, June 1, 1910, to December 31, 1910, the amount was \$240.50, but that included an unusually large item, very unusual, of \$35.50, in the unloading of the “Manhattan” (pp. 1281, 1282).

Mr. J. B. Smith says:

“I recall that the method of compensating the custom-house weighers on the water-front for overtime was changed at various periods, but I do not remember the actual details. We always recognized over-time on the water front by payment” (p. 2167).

This reference by Mr. Smith to the change in method of compensating weighers for overtime, leads us to the testimony of the custom-house officials, Mr. Blinn and Mr. Cook.

Mr. Charles H. Blinn, for two years acting deputy collector of the port, and for 35 years connected with the customs service, had been special deputy surveyor for five years before becoming deputy collector of customs. During these five years, the assistant weighers, as being attached to the Surveyor's Department, were under his jurisdiction (p. 1272).

"Prior to the month of March, 1906," says Mr. Blinn, "the assistant weighers *were paid for overtime by the importers*. The compensation would be \$4.00, or \$8.00 when the weigher worked at night. The payment was made to him direct by the cashier of customs, the money being deposited with that officer by the importer" (pp. 1272-3).

Between March, 1906, and January 1, 1911, this practice was changed under an order of the department, and those weighers who worked at night were allowed a day off, not necessarily the next day—no other compensation being known to the office; and that was the situation until 1911, except that an allowance was made for Sunday work, but no money was paid by the importer to the government. Fifteen or twenty years back, the importers paid the weighers directly for overtime; then for four or five years prior to 1906,

"the practice was for the importer to pay this overtime to the assistant weigher through the cashier. At the present time, also the assistant weighers are compensated in that way. The regulation by which this was brought into effect was in 1911, but I do not recall the exact date" (p. 1273).

Mr. Cook's testimony is along the same lines (pp. 1274-1280).

As to the donation account: when the Western Fuel Company took over the business of Rosenfeld Sons, Mr. Rosenfeld told Mr. J. B. Smith of the practice of Rosenfeld Sons to give a gratuity to the employes on the dock, for courtesies extended, and Mr. J. B. Smith continued the practice. These gratuities, along with donations to charitable institutions and people in distress, make up what is called the donation account. In that account is an item, under date of January, 1908, \$107.00, says Tidwell, and "the voucher corresponding thereto, discloses Christmas donations to the Mail Dock" (pp. 657-8). The amount of the voucher is \$150.00, and during December of the same year, Tidwell continues, there is a voucher for Pacific Mail donations, Chisholm \$70.00, Wilson \$25.00, Park \$20.00, Blake \$10.00, and Dunn \$20.00 (p. 658); and Mr. Chisholm, the marine superintendent, says he received a Christmas donation in 1908, "it was about \$50.00," and that was the amount he received each succeeding Christmas. He also got some coal, about \$14.00 worth a year, a ton or two, (pp. 438, 466), and Thompson, the purchasing agent of the Pacific Mail, got coal in the same way (p. 1241). Park, who got \$20 at Christmas, used to give the Fuel Company the daily reports of the coalings, sometimes considerable work (p. 1532), and as to Thompson, it was appreciated by the company, dealing with a large institution like the Pacific

Mail Steamship Company, that its bills were expedited. Mr. R. P. Schwerin, the executive head of the Mail Company, to which the Western Fuel Company had sold three million dollars worth of coal, got some coal for his domestic use, for which no bills were rendered to him—in six years, about \$1400.00 worth of coal (pp. 1235, 1237). At page 652 of the transcript is set out U. S. Exhibit No. 136, entitled: “Extracts from Donation Account”. It covers the period of approximately seven years, from April 5, 1906, to January 31, 1913. It shows donations of small amounts of coal to Pacific Mail employes as follows:

Captain Anderson, two small items, one in April, 1906, the other in April, 1907, in all, \$34.46;

Chief Allen, Chief Engineer of the “Asia” (p. 437) seven amounts between January, 1907, and January, 1909, in all \$63.14;

Captain Wilson, in charge of dock stevedores at Mail Dock (p. 437), twelve amounts between September, 1906, and May, 1911, in all \$172.98;

P. McCarthy, assistant in treasurer’s office of Mail Company (p. 2161), sixteen amounts between July, 1906, and December, 1912, in all \$148.00;

J. Hauxhurst, formerly marine superintendent (p. 438), two amounts, June and September, 1906, in all \$30.06;

Three assistant weighers are named in this account, for small amounts—Freund, \$19.00 in November, 1909, \$9.50 December 31, 1909, and \$4.75

October 31, 1912; Finnigan, March 29, 1907, \$8.00; Roundy, October 22, 1910, \$7.10, and Twigg, August 31, 1912, \$9.50, and January 31, 1913, \$4.75.

It will not be seriously assumed that these small gratuities were the purchase price of the persons named, for participation in a conspiracy to defraud the Pacific Mail Steamship Company of some \$300,000, and, in lesser degree, the government. Mr. J. B. Smith states the matter fully and frankly:

“Our practice or custom of making certain presents to some of the employees of the Pacific Mail Steamship Company at Christmas time began with the first Christmas after the incorporation of the Western Fuel Company. These presents amounted to about \$125.00 or \$150 a year. Mr. Rosenfeld told me that it had been the practice of his company to give a gratuity to the employes down on the dock, for many little courtesies extended to the company, and I wished to continue to operate the business as a whole along the lines of John Rosenfeld Sons” (pp. 2166-7)

And Mr. Tidwell testifies:

“I think there are some donations to charities in the donation account; that is, the donation account generally apart from the list which I have prepared. Whether the majority in amount of money shown to have been donated was donated to charitable organizations, or not, I don't know, because I did not foot up the entire account and deduct from it the amount which appeared to have been donated to charities. It is true that the names are stated in full of various charitable institutions. I cannot even say whether a large proportion of the names on the donation account are the

names of charitable institutions. There are a number of such institutions in the donation account. There are people in that account who are neither employees of the Pacific Mail nor of the Government nor of any body else. There are names of individuals as well as of institutions" (pp. 659-660).

Mr. J. B. Smith continues:

"Our so-called 'Donation Account' is one kept for coal that is given to charitable institutions, to people in distress, to people we feel exchange courtesies with the company to whom we make no charge for coal furnished. I know all about the giving of coal to Mr. McCarthy of the Pacific Mail Company, whose name appears in this donation account. He is an assistant in the Treasurer's Department, and has to do with the paying of the Western Fuel Company's coal bills. With respect to Mr. Thompson whose name also appears in that account, I do not know him personally, but I know that he is connected with the Pacific Mail Company, and that his duties are to pass upon and audit coal bills. Both of those gentlemen therefore have duties connected with the time of issuing vouchers and the time within which money can be collected for bills. The reason that I allowed these gentlemen to have an occasional ton of coal was to expedite the payment of our coal bills. They handle and pass bills for payment. In a large corporation like the Pacific Mail Steamship Company, our bills might kick around for a month before we could get our pay, and, therefore, it is an accommodation to us that these gentlemen hurry our bills along, and I feel that in sending them an occasional ton of coal I am simply exchanging courtesies with them. There are also a great many people in our donation account with whom the Western Fuel Company had no busi-

ness dealings at all. It is a fact that Vice-President Schwerin of the Pacific Mail Company has, since the fire of 1906, received coal from us from time to time for his personal use, for which he has not paid any money. To the best of my recollection, Mr. Schwerin first received coal without paying for it shortly after April, 1906. Prior to that time he sent his personal check for coal. The change came about in this way: shortly after the fire and during the confusion of things, Mr. Schwerin's bills for coal were placed on my desk, and I made up my mind that I was not going to allow him to pay for his coal for his household use. Many time he asked me to send him a bill and I told him I would, but I never did. I thought it was rather a small thing to send a man a bill for a ton or two of coal when we were doing a large business together. I regarded this matter simply as an exchange of courtesies between us. I made up my mind that despite the fact that he asked me to send him a bill that I would not let him pay for his coal, and I took steps accordingly" (pp. 2161-2163).

And, further:

"I had absolute charge of the donation account. I principally determine the amount and the beneficiaries of these donations, but when I thought that there were questions regarding certain charitable organizations, as to the amounts, I discussed such questions with others. Mr. Chisholm did not to my knowledge receive more than nine tons of coal by donation. I am supposed to have a thorough knowledge of the disposition of these donations and of their extent. Coal was not to my knowledge frequently given to Mr. Chisholm and others of which no record was kept by the company. I was here in court when Mr. Chisholm testified he got all his coal from the Western Fuel Com-

pany for years past. I think he is the superintending engineer for the Pacific Mail Steamship Company. If he attends to his duties, he certainly looks after the coal that is received by that company. Mr. McCarthy is in the Treasury Department. He is a long-time friend of mine, for 30 years. When you asked me whether 'I had to give him coal to grease the wheels in his office down there', I will answer that if you want to assume it that way you can. I don't know Mr. Thompson of the Pacific Mail, and I do not know what his title was there. I knew that our bills or claims had to go through his office. I am not aware that certain engineers of the Pacific Mail Steamship Company also received donations. I am not aware of the fact, if it be a fact, that our own donation account shows that. So far as I know, all donations made by the Western Fuel Company within the last 8 years appear on the books of the company in one form or another. In answer to the question whether I don't know Mr. Chisholm testified he got \$50 every Christmas, and the books only show one or two payments to him, I will say that I cannot help what Mr. Chisholm testifies; I am answering the questions put to me as I understand them and know the facts. There was no money distributed from the Western Fuel Company to the employees of the Pacific Mail Steamship Company except at Christmas time. That I am positive about. I certainly consider that the giving of coal to Mr. Schwerin was a matter of courtesy. I take the responsibility for receipting, without getting payment, the bills made out against Mr. Schwerin. It is true that the books of the company show that those bills were charged up against Mr. Schwerin and that he was credited with the amount of the bills every once in a while; that was under my authority. I did not do that entirely for the purpose of making it appear, in case anyone should ex-

amine the books, that Mr. Schwerin was paying for the coal, but simply to insure that, if Mr. Schwerin came there in my absence, he would find that the bills were paid and would not be able to pay for the coal himself, and I did not intend that he should pay for it. If Mr. Norcross testified in this case that whenever coal was given by way of donation to anybody that fact appeared in the donation account, I believe he was testifying to the best of his knowledge and belief. I will assume that I heard him afterward testify to the fact that I receipted the Schwerin bills without getting payment. The entry of the amount of coal gratuitously given to Mr. Schwerin in the operating expenses, without setting forth the facts as they actually existed, was a matter for the accounting department. Those amounts were charged up to the operation of the business and that was sufficient. Mr. Schwerin never got his coal gratuitously until about the time of the fire. I do not think that there are any books extant now that were in existence at the time of the fire of 1906. I do not think there is any account with Mr. Schwerin prior to the fire and earthquake of 1906, but I will make this statement: as a matter of fact, all payments of all kinds in the transaction of our business in the way of checks and letters containing checks passed through my hands and Mr. Schwerin sent checks for the payment of his coal prior to the fire of 1906, and I received those checks. I am a very warm friend of Mr. Schwerin and have been for 25 years" (pp. 2202-5).

This case has now been exhaustively reviewed. The argument made to this court for its order remanding the cause for a new trial, called for an exhaustive review of the evidence, and we have essayed to meet the requirement. Upon this court

is now imposed the serious duty, one, we are sure, that will not be abnegated or shirked, of giving the most careful consideration to what counsel have been at such apparent pains to gather and present. The liberty and honor of these citizens are in the hand of the court. There can be no higher responsibility.

The government in this case may not prove the conspiracy set forth in the indictment by attempting to impute some other conspiracy—it will be held to the conspiracy described in the indictment, and if it has failed, as indeed it has failed utterly, to prove that conspiracy, these defendants have the right to another trial. There can be no answer to this contention—we submit it as conclusive.

But we have gone beyond the exigencies of the case. We have reviewed this evidence from the standpoint of any imputed conspiracy to defraud, whether described in the indictment or not, and we have shown, it is submitted, from this record and by this record, as the result of painstaking examination and study, and with what we conceive, with deference, to be frankness and fairness of presentation, that there is no evidence substantial in character, there is none whatever, to fasten upon these defendants the accusation that they conspired, in any manner, or from any point of view, to defraud either the United States or the Pacific Mail Steamship Company. Under any indictment, not the one the case proceeded upon but any indictment, the charge has broken down.

“There was a legal presumption”—we recall the language of the Circuit Court of Appeals for the 8th Circuit, (*U. P. Coal Company v. United States*, 173 Fed. p. 740), supported by the citation of many cases, federal and state,

“that each of the defendants was innocent until he was proved to be guilty beyond a reasonable doubt. The burden was upon the government to make this proof, and evidence of facts that are as consistent with innocence as with guilt, is insufficient to sustain a conviction. Unless there is substantial evidence of facts which exclude every other hypothesis but that of guilt, it is the duty of the trial court to instruct the jury to return a verdict for the accused; and where all the substantial evidence is as consistent with innocence as with guilt, it is the duty of the appellate court to reverse a judgment of conviction.”

And the language of the Supreme Court of the United States, in *Clyatt against United States*, 197 U. S. pp. 221-3, bears a weighty admonition here to all of us, in presence of the wrong, the miscarriage, and the tragedy bound up with the conviction of these defendants below; the Supreme Court said:

“While no motion or request was made that the jury be instructed to find for defendants, and although such a motion is the proper method of presenting the question whether there is evidence to sustain the verdict, yet *Wiborg against United States*, 163 U. S. 632, 658, justifies us in examining the question, in case a plain error has been committed in a matter so vital to the defendants.”

The court proceeds to comment on the evidence in the case, and concludes:

“We have examined the testimony *with great care* to see if there was anything which would justify a finding of the fact, and can find nothing. No matter how severe may be the condemnation which is due to the conduct of a party charged with a criminal offense, it is the *imperative duty* of a court to see that all the elements of his crime are proved, or at least that testimony is offered *which justifies a jury in finding those elements*. Only in the exact administration of the law will justice in the long run be done, and the confidence of the public in such administration be maintained. We are constrained, therefore, to order a reversal of the judgment, and remand the case for a new trial.”

III.

The Denial of the Motion for New Trial Was an Abuse of Discretion.

The granting or denying of a motion for new trial in the federal courts is ordinarily a matter of sound discretion with the trial judge, not, therefore, reviewable in the appellate court. But to this rule there is an exception, as well settled as the rule itself, that the rule will not be applied where the allowance or refusal of the motion results from a clear abuse of discretion. In the Circuit Court of Appeals for the Third Circuit, it was held in *James against Evans*, 149 Fed. 136, 141:

“While it is a general rule that the allowance or refusal of a new trial rests in the sound

discretion of the court, and will not be interfered with on a Writ of Error, it is well settled that this rule has no application where such allowance or refusal results from a clear abuse of discretion."

And in the Circuit Court of Appeals for the Ninth Circuit, in *Charlton against Kelly*, 156 Fed. 433, 438, the general rule is declared, and held to apply, for the reason, as pointed out at large in the opinion, that "in the present case, there was clearly no abuse of discretion".

And in the Circuit Court of Appeals for the Fourth Circuit, in *Atlantic Coast Line Railroad Company against Thompson*, 211 Fed. 889, 892, it was said:

"The well-known rule of federal practice derived from the common law is, that the granting or refusing a new trial is in the discretion of the trial judge, and that his action is not reversible by writ of error. *Neucomb against Wood*, 97 U. S. 583. To this rule an exception has been allowed, where the conclusion of the trial judge involved clear error of law which could not be corrected by assignment of error for anything done in the course of the trial."

And in the Circuit Court of Appeals for the Sixth Circuit, in *Pugh against Excursion Company*, 177 Fed. 400, the court said:

"It is the general rule that the granting of a new trial is a matter of discretion, and will not be reviewed. But it is not so where the verdict is inconsistent on its face, and shows the abuse of power on the part of the jury. If the granting of the motion is a positive duty,

it is not discretionary. If it is necessary to correct a mistrial, it becomes a positive duty to set aside the erroneous proceedings and grant a new trial."

If this positive duty to correct a mis-trial and to set aside an erroneous proceeding, has not been fulfilled by the trial court, it ceases to be a case, within the general rule, of irreviewable discretion, it becomes the abuse of discretion, and the court of appeals, as it did in the case last cited, will itself fulfil the duty and award the new trial. "The discretion", as said by the Circuit Court of Appeals for the Second Circuit, in *Central Trust Company against Chicago, etc. R. Co.*, 218 Fed. 336, 339, "however, must be exercised in accordance with recognized judicial standards". And in that case an order, discretionary as of the general rule, was reviewed and reversed.

In the case at bar, the denial of the motion for a new trial was an abuse of discretion, for the reason, first, that there was no evidence, substantial or at all, of the conspiracy charged in the indictment, or, for the matter of that of any conspiracy, alleged or not, to defraud the United States in any way. It is futile to say that a trial judge, who denies a motion for new trial after a conviction in such a case, has exercised a "sound" discretion, a discretion "in accordance with recognized judicial standards," or any discretion whatever. The language of Judge Taft, speaking for the Circuit Court of Appeals of the Sixth Circuit, in *Felton against*

Spiro, 78 Fed. 576, 581, a case in which the trial judge declined to consider whether the verdict was against the great weight of the evidence—is apposite here. It is just as apposite here as there, for here, the trial judge denied the motion for a new trial, when the evidence in the case, as we have shown upon the fullest consideration, was utterly lacking to substantiate either the conspiracy which the indictment went upon, or, regardless of the indictment, any conspiracy to defraud the United States. Judge Taft said:

“A motion for a new trial is, of course, addressed to the discretion of the court, and, if the court exercises its discretion, and either grants or denies the motion, its action is not the subject of review. This is so well settled that it is unnecessary to cite authorities upon the point. But the motion for new trial is a remedy accorded to a party litigant for the correction by the trial court of injustice done by the verdict of a jury. It is one of the most important rights which a party to a jury trial has. It is a right to invoke the discretion of the court to decide whether the injustice of the verdict is such that he ought to have an opportunity to take the case before another jury. If, now, in exercising this discretion, it is the duty of the court to consider whether the verdict was against the great weight of the evidence, and he refuses to consider the evidence in this light on the ground that he has no power or discretion to do so, it is clear to us that he is depriving the party making the motion of a substantial right, and that this may be corrected by writ of error.”

The denial of the motion for a new trial was an abuse of discretion for a second reason: It was clear error of law for the trial judge, in face of the motion, to permit the verdict to stand where such verdict, it was made to appear, had been extraneously influenced by misconduct; and the error thus noted

“could not be corrected by assignment of error for anything done in the course of the trial.”

*Atlantic Coast Line Railroad Company
against Thompson, ubi supra.*

On motion for new trial, the affidavit of J. H. Bromberger, one of the trial jurors, was read, and it sets forth the misconduct of Fred Becker, also one of the trial jurors, committed while the case was on trial and as much as a week before the end of the trial. Juror Bromberger says:

“I was one of the trial jurors on the above-entitled case. A week or more before the end of the trial Mr. Fred Becker, another of the jurors, gave to a number of the jurors, including myself, a copy of the Oakland ‘Tribune’ containing a piece about the Sugar Cases in the East, and appearing in that part of the ‘Tribune’ written by the ‘Knave’. Mr. Becker showed the jurors the particular item and asked them to read it, saying it was a similar case, the only difference being that one was sugar and the other coal.

According to my recollection this article was handed to Mr. Beans, Mr. Bollander, Mr. Gatlery, and Mr. Long, and it may have been handed to others. I received and read the article myself before the court had taken up, and it was handed to me either directly by Mr.

Becker or through Mr. Gatley. In any event Mr. Becker was present because I saw him pointing out the article *and remarking about the similarity in the cases*" (pp. 2299-2300).

The affidavit of Mr. Bromberger sets out the article, which appeared in the Oakland "Tribune" of Sunday February 8, 1914 (p. 2300). We set this publication out, and it will be recalled to the memory of the court, as the court reads it, that the indictment in the case at bar proceeded, in very terms, upon an alleged manipulation of the scales. The heading is: "RECALLS SUGAR FRAUD HISTORY". The article proceeds:

"Winfred T. Denison, the new Secretary of the Interior for the Philippines, recalls some sugar fraud history in the East in his address at the Palace, a week ago, before the Commonwealth Club. The suit was against the Have-meyer Sugar Trust *for sugar weighing frauds*. Denison acted in this famous case as Assistant United States Attorney General. *By manipulating the scales*, it was shown the trust defrauded the government in ten years out of four million five hundred thousand dollars in duties. As a result of the suit, *it had to pay back this large sum to Uncle Sam*. Denison said *this and other evils* were due to the 'spoils system'. The trust gave regular contributions to both parties and expected a ten-fold return one way or another. The new Philippine official did not go into the details of the fraud suit, but if I recall correctly one of the men he sent to the penitentiary at Atlanta for two years, was Oliver Spitzer, who had been the superintendent of docks for the American Sugar Refining Company, commonly alluded to as the trust. After he got out Spitzer admitted

the steel springs used to manipulate the scales on the dock were his invention. He said he had not confessed at his trial for two reasons. He thought *nothing could happen to the trust*, believing it so strong the government could do nothing with it. He also remarked:

‘I was advised to confess. I said the only confession I can make *will carry me into a cemetery.*’

‘You are referring to one of the trust magnates’ asked the lawyer.

Spitzer said ‘yes’ ” (pp. 2300-2301).

This same newspaper article, set out in Mr. Bromberger’s affidavit, was also handed to another juror, William K. Beans, to read, and by the same juror, Fred. Becker, who gave it to Mr. Bromberger. Mr. Beans’ affidavit is as follows:

“That he was one of the jurors impaneled to try the above-entitled cause.

That about ten days prior to the time when said cause was finally submitted to the jury for its verdict Fred Becker, another one of the jurors who tried the above cause, *handed to affiant to read* a newspaper article referring to, or containing, *a series of articles distinctly hostile to the defendants herein*, commenting at some length in a manner adverse to their defense herein, and *likening this case to the American Sugar Refining Company case in New York*, in which some of that company’s officers or employees *had been convicted for false weighing*. Said Becker had previously given these articles to several other of said jurors to read, and some of them had read the same, and said Becker told affiant at the time of handing him said articles as aforesaid *that he ought to read them*. Affiant merely glanced

at said articles *observing their character*, and on the following morning returned them to said Becker without further reading them. Affiant is not able at this time to state in what paper said article or articles were published, nor can affiant repeat the language thereof. About said time *Thomas C. Maher*, another of said jurors, *told affiant that this case was similar to said American Sugar Refining Company case.*

That affiant during the trial hereof read the articles then appearing in the San Francisco 'Examiner' regarding this case.

That said Becker told affiant at the time said newspaper article was handed affiant what were the contents of said article, *that it referred to the sugar frauds, saying that the sugar people were crooked, and that the Western Fuel people were operating along the same lines.*

That the article hereinabove referred to was lengthy and was partly printed in type larger than that ordinarily used in newspapers, and was contained on the front page and according to affiant's recollection also on a subsequent page of said newspaper" (pp. 2308-9).

The affidavit of Mr. R. E. Herdman, a trial juror, also brings in this same Fred Becker. Mr. Herdman's affidavit is as follows:

"I was one of the trial jurors on the above-entitled case. *After the case had been submitted to the jury* and while we were in the jury-room, but before we had reached a verdict, Mr. Fred Becker, another of the jurors said to me: 'Now, Mr. Herdman, I presume that you read the daily papers, the same as I do,' and I told him that I read most of them every day" (pp. 2302-3).

The affidavit of William Long, a trial juror, refers to the same Thomas C. Maher, like Fred Becker a juror in the case, who, as Mr. Beans states, "told affiant that this case was similar to said American Sugar Refining Company case"—Maher making this statement about the time when Fred Becker handed Beans the newspaper article mentioned in the affidavits of Bromberger and Beans. Mr. Long says:

"One day *about a week before the trial ended* I heard the 'Colonel', as we all called Mr. T. F. Maher, *talking about the sugar cases*. This was outside in the hall and *just before two o'clock*. I was late that day and got there *toward the last of the conversation*. He was telling a number of the other jurors something about the case, and how they got one of the men involved, but this man kept his mouth shut and they could not get the others, but he said *they convicted one of them*" (pp. 2303-4).

The affidavit of Joseph Stackler, another trial juror (p. 2305), also brings in this same Maher. Mr. Stackler's affidavit is as follows:

"A week or more before the close of the trial of the above-entitled case, a group of the jurors were standing in the hallway outside the door of the courtroom discussing the case on trial and the sugar case back east. It was shortly before 2 o'clock in the afternoon that this discussion took place, and Mr. Maher, another of the jurors, did most of the talking according to my recollection.

I do not remember the exact words used, but the substance of them was that *the Sugar Company and the Western Fuel Company were big corporations*, and that *all these big corpora-*

tions did business along the same lines, and that all of them gave commissions or contributions, and that the Sugar Case was a similar case, only one company was handling sugar and the other coal.

My recollection is that Mr. Bollander was also present and did some of the talking, but *the chief speaker* was Mr. Maher, and *I think that Mr. Becker was also present*, but I did not see the article in the 'Tribune' and I do not think it was being shown to the jurors *at that time*" (p. 2306).

Maher and Becker both make affidavits. Maher expressly corroborates Mr. Bromberger, first as to the circumstance that the newspaper article mentioned in Mr. Bromberger's affidavit was introduced to the notice of jurors by Fred Becker, and secondly that this paper came from Becker to Bromberger, not directly, however, according to Maher, but through Maher to whom the paper had been given by Becker. Maher distinctly says that it was after Becker had brought this paper to the trial, and had given it to Maher, that Mr. Bromberger requested him to let him see it—Mr. Bromberger, it will be remembered, having stated that Becker asked the jurors to read the particular article (p. 2300). Maher further says that Mr. Bromberger returned the paper to him, and that he returned it to Becker without having read it or commented upon it. It follows from this, that Becker was circulating this paper, giving it first to one juror and then to another, while the case was on trial; for Becker admits, as we shall show, that he handed

this article to Mr. Beans, he does not deny that he gave it to Bromberger indirectly through Maher, he does not deny that he gave it to Maher, and that Maher gave it back to him, and Maher says that Becker did give him the article, and that he gave it to Bromberger; and it appears further, from the affidavit of Mr. Beans, that Becker handed the article to him. We quote from Maher's affidavit in terms (p. 2471):

"Said juror, J. H. Bromberger, is mistaken in stating that the juror Fred Becker gave to him a copy of the Oakland 'Tribune' containing a piece about the sugar case in the East and appearing in that part of the 'Tribune' written by The Knave. The paper referred to *had been given by Mr. Becker to me. Subsequently Mr. Bromberger requested me to let him see the paper, and I handed the paper to him.* I do not recall the exact date upon which this transaction occurred but I do remember that it was during one morning *prior to the noon recess of said court. During the noon recess of the day, and on Market street, Mr. Bromberger returned the paper to me and I placed it in my pocket. Thereafter, and on the same day and before court convened for the afternoon session and while in the corridor of the Post Office Building connecting with said courtroom, I returned the paper to Mr. Becker without having read it and without making to the said Becker any comment thereon*" (pp. 2471-2).

Maher makes a formal denial (p. 2472) of the statements in reference to the Western Fuel Company and the Sugar Company, with which he had been charged by jurors Stackler (p. 2306) and Long (pp. 2303-4); but he does not deny the state-

ment made by juror Beans that about the time when Becker gave this newspaper article to Beans "Thomas C. Maher, another of said jurors, told affiant that this case was similar to said American Sugar Refining Company case" (pp. 2308-9).

Juror Gatley says that this newspaper article was not shown to him by Becker, nor did he read it, and neither Becker nor Maher said anything about it in his presence (p. 2474). Juror Bolander makes an affidavit, word for word, like the affidavit of Gatley (pp. 2477-8).

This leaves the affidavit of Becker. It reads as follows:

"I was one of the jurors impaneled to try the above-entitled action, and by whom said action was tried. I have read the affidavit dated March 6th, 1914, made by *William K. Beans*, who was also one of said jurors impaneled to try said action, and by whom said action was tried.

"The verdict of the jury in said action was rendered on the night of *the 17th day* of February, 1914. On or about the *9th day* of February, 1914, *I did hand to affiant a newspaper article to read*, which newspaper article referred to the *American Sugar Refining case, in New York*" (pp. 2485-6).

At this point in the affidavit, Becker undertakes to state his opinion or conclusion as to the construction and effect of the newspaper article. The opinion of Mr. Becker as to the interpretation of a writing, is not evidence, it is not binding upon anyone, it is not admissible. But it has a significance, for it brings out the manifest impression

which the article made on Juror Beans, and which, as we shall show from Becker, it was Becker's purpose to convey. To make this clear:—

Mr. Beans states in his affidavit that Becker "handed to affiant a newspaper article" (p. 2308).

Mr. Beans

"is not able at this time to state in what paper said article or articles were published, nor can affiant *repeat the language thereof*" (p. 2308).

But if Mr. Beans cannot repeat the language, he does give the impression made upon him, the effect upon his mind, of the article, what it meant for him. He says:

"Fred Becker, another one of the jurors who tried the above cause, handed to affiant *to read* a newspaper article referring to or containing, *a series of articles distinctly hostile to the defendants herein*, commenting at some length *in a manner adverse to their defense herein*, and *likening this case to the American Sugar Refining Company case in New York* in which some of that company's officers or employees *had been convicted for false weighing*" (p. 2308).

Becker's affidavit simply prefaces this language of Beans with the introductory clause, "it is not true"—thus:

"It is not true, however, that said newspaper contained a series of articles, or any article, distinctly or at all hostile to the defendants in the above-entitled action, or any of them, or that said article commented in any manner, shape or form on the defense of the defendants, or any of them, in this case, or likened this case to

said American Sugar Refining Company case in New York, or to any other case" (p. 2486).

This part of the Becker affidavit may be an attempt, a somewhat sorry one, to impose an innocuous interpretation upon a writing, but it leaves unqualified and unimpaired the fact that this newspaper article created in the mind of Mr. Beans the impression which Mr. Beans has expressed in his affidavit.

Becker's affidavit now sets out the newspaper article, as we have already set it out, and accompanies it with the statement that it was published in the Oakland "Tribune" on February 8, and that this was a *Sunday morning* issue of the paper (p. 2486). Becker then states that he resides, and has resided for many years, in Oakland, and he then makes this statement:

"*Daily* during the trial of the above-entitled action, in traveling from the City of Oakland to the City and County of San Francisco where said trial was in progress and where the above-entitled court held and still holds its session, I was accustomed to take with me and read *daily* newspapers, among which was the said Oakland 'Tribune,' for which newspaper I am now, and for many years last past have been a subscriber" (p. 2488).

But Becker was not "traveling from the City of Oakland to the City and County of San Francisco where said trial was in progress and where the above-entitled court held its session"—on Sunday morning, or at any time, morning, afternoon or evening, on Sunday; and if he "was accustomed

to take with me and read daily newspapers, among which was said Oakland 'Tribune' ", and did in fact take with him the Oakland "Tribune" for Monday morning—"to take with me and read—" he does not explain why, in addition to Monday's "Tribune", he found it necessary to take to the Court room and into the jury, the Sunday "Tribune", which he read on Sunday, and which contained this article.

And when, on Monday morning Becker "traveled" from Oakland to the court room in San Francisco, he says that he had with him, not the Sunday issue of the "Tribune" but a portion of that issue—what portion?

"On the morning of February 9th, 1914, or February 19th, 1914 (it was February 9th), I had with me *that portion* of said *Sunday* edition of said Oakland 'Tribune' of February 8th, 1914, entitled: '*The Knave*', the whole of which article I *had* read".

He now goes on to admit that he gave the article to Mr. Beans *to read*, and not necessarily on Monday, the 9th of February, it may have been the 10th. "While outside of the court-room," on the morning of said 9th or 10th days of February, 1914, I did call the attention of said William K. Beans to said article, and gave it to him *to read*", and he must have given that article to Maher,—who, in turn, says he gave it to Juror Bromberger,—before giving it to Mr. Beans; for Becker's statement is that Mr. Beans did not return the article to him, that it was never returned to him, admitting,

however, that he gave the article to Maher. This is what he says:

“At no time did I give or show said article to any of the other jurors engaged in the trial of said action, *excepting Juror Maher*. Said newspaper article was the *only* article which I ever gave to said William K. Beans to read, or to which I called his attention during said trial. Said William K. Beans is in error when he states that the following morning he returned said newspaper article to me. Said newspaper article was never returned to me, nor was it afterwards seen by me until within the past few days when my attention was directed to it in connection with the making of this affidavit” (p. 2488).

He adds that at the adjournment of court, on the day after he gave the article to Beans, this juror apologized to him for not having returned the article, and said he would return it next morning—this, while Becker and Beans were crossing the Bay to the Oakland side. “I told him that he need not mind because I *had read* the article and did not care anything further about it;” and he repeats, that the newspaper article was never returned to him (p. 2489).

And finally, Becker denies the statement which Beans charges him with having made when he gave Beans the paper to read, “that the Sugar people were crooked, and that the Western Fuel people were operating along the same lines” (pp. 2489, 2309).

What possible motive or purpose could Becker have had, after having read this article at his home

in Oakland on Sunday, in bringing that article across the bay with him to the courtroom on Monday, and, on Monday or Tuesday, giving that article to Maher, "calling the attention" of Beans to that article, and "giving it to him *to read*"—what motive or purpose, except to point out the alleged similarity in the sugar and coal cases? "It is not open to reasonable doubt" (*Mattox against United States*, 146 U. S. p. 150). More than that, Juror Bromberger, in making affidavit that this article was handed to Mr. Beans and to some other jurors, and that it was handed to him either directly by Becker or through Juror Gatley, goes on to say:

"In any event, Mr. Becker was present, because I saw him *pointing out the article and remarking about the similarity in the cases.*"

Becker does not deny that he handed the article to Beans at least, he does not deny that it came to Bromberger from him through another juror to whom he had given it, whether Maher or Gatley; and he does not attempt to deny, at any place in his affidavit, the statement of Juror Bromberger—he makes no reference whatever to it—that Becker was "pointing out the article and remarking about the similarity of the cases"; nor does he anywhere deny the statement of Beans, that he, Becker, said to him that he "ought" to read that article—"Becker told affiant," Beans says without denial from Becker, "at the time of handing him said articles as aforesaid, *that he ought to read them*" (p. 2308). If Becker had been specially engaged for the

work,—we are not intimating at all that he was,—he could not have been a more industrious missionary.

The trial of this case began on December 9, 1913; the verdict was returned February 17, 1914 (pp. 17, 54). It was on trial two months and over. About a week before the case went to the jury, and when the substance of the evidence had been delivered and heard, Becker, under the circumstances pointed out, introduces this newspaper article into the jury. The article has the capitalized and suggestive heading: "RECALLS SUGAR FRAUD HISTORY" (p. 2300). It begins by referring to an address made in San Francisco, before the Commonwealth Club, while the trial of the case at bar was going on, and just a week before the publication in the "Tribune"—an address by Winfred T. Denison, described as being the new Secretary of the Interior for the Philippines, and as having acted as Assistant United States Attorney General in a suit against the Sugar Trust for *sugar weighing frauds*. The language of the article is:

"Winfred T. Denison, the new Secretary of the Interior for the Philippines, recalls some sugar fraud history in the East in his address at the Palace, a week ago, before the Commonwealth Club. The suit was against the Havemeyer Sugar Trust for *sugar weighing frauds*. Denison acted in this famous case as Assistant United States Attorney General" (p. 2300).

In our references to the Heike case, both in the Circuit Court of Appeals and in the Supreme Court

of the United States, it was pointed out that the indictment and the proof went upon the tampering with the scales on which imported sugar was weighed by the custom-house at the port of New York, and we referred to the language of the Supreme Court, commenting upon the secret insertion of steel springs in the scales, in aid of the fraudulent manipulation. And in the case at bar, the indictment proceeded, as we have already quoted, upon the fraudulent manipulation of the scales—

“Scales and weights which were to be and were *fraudulently manipulated* by the defendants to the end that *said scales* should record the *weights* of said coal desired by the defendants, and *not the true weights* of the coal *placed thereon*, and the said defendants did so *manipulate said scales and weights* and the method of *weighing thereon*, so that said scales and weights did record the weights of coal desired by said defendants, and not the true weight of the coal *so placed thereon*” (p. 7).

Now, then, this Becker article continues:

“*By manipulating the scales*, it was shown the trust *defrauded* the Government in ten years *out of four million five hundred thousand dollars in duties*. As a result of the suit, *it had to pay back this large sum to Uncle Sam*. Denison said *this and other evils* were due to the ‘Spoils system’. The trust gave regular contributions *to both parties* and expected *a ten-fold return one way or another*. The new Philippine official did not go into the details *of the fraud suit*, but if I recall correctly *one of the men he sent to the penitentiary at Atlanta for two years*, was Oliver Spitzer, who had been *the superintendent of docks* for the American Sugar Refining Company, commonly

alluded to as the trust. After he got out *Spitzer admitted the steel springs used to manipulate the scales on the dock were his invention.* He said he had not confessed at his trial for two reasons. He thought *nothing could happen to the trust*, believing it so strong the Government could do nothing with it. He also remarked:

‘I was advised to confess. I said the only confession I can make *will carry me into a cemetery.*’

‘You are referring to one of the trust magnates,’ asked the lawyer.

Spitzer said ‘yes’ ” (pp. 2300-2301).

In *Mattox against United States*, 146 U. S. 140, 149, 150, the Supreme Court, in a capital case said, in language equally applicable to the case at bar:

“It is vital in capital cases that the jury should pass upon the case *free from external causes tending to disturb the exercise of deliberate and unbiased judgment. Nor can any ground of suspicion that the administration of justice has been interfered with be tolerated.*”

And further:

“The text books refer to many cases in which the action of the officer having a jury in charge, when prejudice might have resulted; or *unauthorized communications having a tendency to adverse influence*; or the reading of newspapers containing imperfect reports of the trial, or *objectionable matter* in the form of editorial comments or otherwise, have been held *fatal to verdicts.*”

In this *Mattox* case, a newspaper article, set out in full at pages 143-4 of the case, and summed up

in the opinion of the court at pages 150-151, had been introduced into the jury room—"was read to the jury in their presence and hearing". It does not appear that any juror commented upon this newspaper article, or remarked to a fellow juror upon its correspondence to the facts of the case they were trying, or stated to any other juror that he "ought" to read it. Nor, regard being had to the indictment in the case at bar, and to the theory of manipulation of the scales upon which that indictment proceeded, was there anything in the Mattox article like the concrete particularity and directness of reference which we have pointed out in the Becker article. The Mattox article (pp. 143-4, Mattox case, *supra*) stated that if Mattox was not found guilty, he will be a lucky man, for the evidence against him was very strong, "or at least appeared to be to an outsider"; also that "it was expected" that the deliberations of the jury would not last an hour, but that ten hours had gone by and a verdict was not reached "by 10:30 last night, when the jury adjourned".

The attorney for the defendant, it was said, "made an excellent speech in his behalf to the jury". The district attorney "also made a fine speech", one of the best and most logical he ever made—"it was so strong that friends of Mattox gave up all hope of any result but conviction * * *" nevertheless, "when the jury filed out, Mattox seemed to be the most unconcerned man in the room".

The mother of Mattox is referred to:

“His mother was very pale and her face indicated that she had but very little hope; she is certainly deserving of a good deal of credit, for she has stuck by her son, as only a mother can, through all his trials and difficulties, and this is not the first one by any means, for Clyde has been tried for his life once before.”

The inference is left to be drawn that on this former occasion, he had been acquitted. It is further said, and it is the only comment upon the actual case on trial,

“nobody saw him do the killing, and the evidence against him is purely circumstantial, but very strong, it is claimed, by those who heard all the testimony.”

This was the entire publication. The Supreme Court of the United States sums it up and characterizes it as follows:

“The jury in the case before us retired to consider of their verdict on the 7th of October, and has not agreed on the morning of the 8th, when the newspaper article was read to them. *It is not open to reasonable doubt that the tendency of that article was injurious to the defendant.* Statements that the defendant had been tried for his life once before; that the evidence against him was claimed to be very strong by those who had heard all the testimony; that the argument for the prosecution was such that the defendant’s friends gave up all hope of any result but conviction; and that it was expected that the deliberations of the jury would not last an hour before they would return a verdict, *could have no other tendency*” (pp. 150-151).

In the case at bar, the newspaper article in question was handed to jurors by one of their own number, who had been sitting with them for weeks hearing the testimony of the government and of the defense, and in whom they would naturally repose confidence, to whose suggestion they would naturally be moved to accord serious attention. Becker could have no purpose in giving this article to jurors "to read" except to create in their minds the impression of the similarity of the two cases, the one "for sugar weighing frauds", the other for alleged coal weighing frauds. And the affidavit of Juror Bromberger stands undenied that Becker was "pointing out the article and remarking about the similarity in the cases"; and in addition to that, the affidavit of Juror Beans is undenied, that when Becker gave him the articles "to read", Becker told Beans "that he *ought* to read them". But one impression could have resulted, the impression, namely, described by Juror Beans in respect to the article, as being "distinctly hostile to the defendants herein, commenting at some length in a manner adverse to their defense herein, and likening this case to the American Sugar Refining case in New York, in which some of that company's officers or employees had been convicted for false weighing" (p. 2308). The article itself does not in terms liken the sugar case to the coal case, but that was the thing that Becker had in mind when he gave the article to Beans "to read"; when he was "remarking about the simi-

larity in the cases; and when he was telling Beans "that he *ought* to read them", what other impression could have been made except the one described by Beans—"it is not open to reasonable doubt" (Mattox case, *ubi supra*). The article was headed—"RECALLS SUGAR FRAUD HISTORY"; it tells of its authoritative source—the Secretary of the Interior for the Philippines, who "recalls some sugar fraud history in the East", in a public address, made in San Francisco, while this very case was being tried, and only a week before Becker was submitting the article to fellow jurors. The suit in question is said to be "against the Havemeyer Sugar Trust for *sugar-weighing frauds*", and Denison is said to have been the government counsel in that case. What was shown in that case, according to this article? "*By manipulating the scales, it was shown the trust defrauded the government in ten years, out of four million five hundred thousand dollars in duties.*" And it is said further, that the government won the suit, and the sugar trust had to pay all this money back to the government. The further information is given that more than one of the men tried by Denison went to the penitentiary; that one of them named Spitzer, "the superintendent of docks" for the Sugar Company, served two years in the penitentiary at Atlanta; and that this same Spitzer, after serving his term, "admitted the steel springs used to manipulate the scales on the dock were his invention". And Spitzer is said to have given two reasons for not having confessed at his trial—first because he

thought the trust was all-powerful, and second, "I was advised to confess; I said the only confession I can make will carry me into a cemetery"—the reference being to one of the trust magnates.

Think of Becker giving such an article as this to jurors to read, in such a case as the one at bar, after the case had been on trial for weeks, and was approaching its final submission to the jury. Think of Becker handing this article to jurors "to read"; "remarking about the similarity in the cases"; telling the juror that he "ought" to read it. "It is not open to reasonable doubt", as the Supreme Court said in the *Mattox* case, "that the tendency of that article was injurious to the defendant"—such an article hawked about under such circumstances,—we again borrow the language of the Supreme Court—"could have no other tendency".

But there is a stock formula, incorporated, *in totidem verbis*, in the affidavits of some seven of the jurors, to the point that none of the newspaper articles, including this Becker article, influenced their judgment in arriving at a verdict—on the assumption, evidently, that such a statement by the juror was admissible to support the verdict. We quote the formula from Becker's affidavit (p. 2489):

"I state positively and unequivocally that none of the newspaper articles relating to the trial of the above entitled action, or to any of the parties or witnesses connected therewith, or commenting upon or relating to any of the issues involved in said action, or said article

above referred to, in any way affected or influenced my judgment in arriving at a verdict in said action. The verdict of said jury, so far as I was concerned, was based entirely and exclusively upon the evidence introduced during said trial, the instructions given by the Court to the jury, and the observations made by me while inspecting a portion of the premises in the possession of the Western Fuel Company, in company with the other jurors, and Hon. Maurice T. Dooling, judge presiding on the trial of said action" (p. 2489).

These stereotype statements are entitled to no consideration whatever, they are incompetent and inadmissible, they must be disregarded. In the case of *Woodward v. Leavitt*, 107 Mass. 453, in an opinion by Mr. Justice Gray, written upon very full consideration, it is said:

"Where a paper, which is capable of influencing the jury on the side of the prevailing party, goes to the jury by accident and is read by them, the verdict will be set aside, although the jury say that they were not influenced by such paper, for it is impossible for them to say what effect it may have had on their minds."

And again:

"If the jury received and read the paper, they could not be permitted to testify upon the point whether it did or did not actually influence them."

And again:

"But where evidence has been introduced tending to show that, without authority of law, but without fault of either party or his agent, a paper was communicated to the jury, which

might have influenced their minds, the testimony of the jurors is admissible to disprove that the paper was communicated to them, though not to show whether it did or did not influence their deliberations and decision. A juryman may testify to *any facts* bearing upon the question of the existence of the disturbing influence, but he cannot be permitted to testify how far that influence operated upon his mind."

This Massachusetts case was approved and followed by the Supreme Court of the United States, in *Mattox against United States*, 146 U. S. p. 149, as being "conformable to right reason and sustained by the weight of authority." The Supreme Court said:

"The subject was much considered by Mr. Justice Gray, then a member of the Supreme Judicial Court of Massachusetts, in *Woodward v. Leavitt*, 107 Mass. 453, where numerous authorities were referred to and applied, and the conclusions announced 'that on a motion for a new trial on the ground of bias on the part of one of the jurors, the evidence of jurors *as to the motives and influences* which affected their deliberations, is inadmissible either to impeach or to support the verdict. But a juryman may testify to *any facts* bearing upon the question of the existence of any extraneous influence, *although not as to how far that influence operated upon his mind*. So a juryman may testify in denial or explanation of *acts or declarations* outside of the jury room, where evidence of such acts has been given as ground for a new trial.' See, also, *Ritchie v. Holbrooke*, 7 S. & R. 458; *Chews v. Driver*, 1 Cox (N. J.) 166; *Nelms v. Mississippi*, 13 Sm. & Marsh. 500; *Hawkins v. New Orleans Printing Co.*, 29 La. Ann. 134, 140; *Whitney v. Whitman*, 5 Mass. 405; *Hix v. Drury*, 5 Pick. 296.

We regard the rule thus laid down *as conformable to right reason and sustained by the weight of authority.*"

And in the Supreme Court of this State, 156 Cal. p. 397, in the case of *Kimic against Ry. Co.*, it is said:

"The statements in the counter affidavits of eleven of the jurors 'that he was governed entirely in his deliberation and in reaching said verdict by the evidence introduced at the trial thereof, and that no outside fact or circumstance influenced him in his deliberation or verdict,' were ineffectual for any purpose. It is thoroughly settled that jurors cannot be heard to deny the prejudicial influence on their minds or knowledge acquired by misconduct. (*People v. Stokes*, 103 Cal. 193; *People v. Chin Non*, 146 Cal. 562). Affidavits of jurors may be used to disprove or explain the alleged misconduct but cannot, admitting the misconduct, be used to show that the verdict was not influenced thereby. (*People v. Stokes*, 103 Cal. 193.)"

We pass, now, to a second and added phase of misconduct, made apparent, as in the phase just considered, by affidavits on motion for new trial, and not open "to be corrected by assignment of error for anything done in the course of the trial" (*Atlantic Coast Line Railroad Company against Thompson*, heretofore noted, 211 Fed. 889, 892).

The very able special counsel for the government, Mr. Roche, in his speech to the jury—which has been assigned for error and misconduct,—said *inter alia*:

“David Powers finally went down to one of his friends who was connected with one of the newspapers in San Francisco, told him what his situation was, told him then, gentlemen of the jury, some of the facts which have been put in evidence, and which by the way at that time was a public scandal, smelling to the high Heavens, and finally was advised by him, when he told him that he was in fear of being brought before the Grand Jury, that it was his duty to go down and tell the United States Government officials exactly what he knew about these frauds” (p. 2246).

The newspaper friend of David Powers, here referred to, is one Stewart Masters, connected, at the time Mr. Roche speaks of, with the San Francisco “Bulletin”, and connected, at the time of the trial, with the San Francisco “Examiner”, writing up the reports of the trial to which we shall have occasion to advert.

David Powers tells of his relations with Masters, and also with Gleason, another “Bulletin” reporter:

“Q. At whose request did you go to Mr. Tidwell’s office?

A. At the request of Mr. Masters.

Q. Mr. Masters was at that time, as you have testified, connected with the ‘Bulletin’, and he is at the present time a reporter on the ‘Examiner’; is that correct?

A. Yes, sir.

Q. And the Mr. Masters to whom you now refer is the gentleman sitting in this court-room reporting for the ‘Examiner’?

A. Yes, sir.

Q. Is it or is it not true that before you ever saw Mr. Tidwell and before you ever had any conference of any kind with Mr. Tidwell

you first disclosed to Mr. Masters and to Mr. Gleason and to Mr. Leo Mayer the larger part of the facts and circumstances connected with this case and the smuggling case to which you have referred upon cross-examination?

A. Yes, sir" (p. 840).

We now call the attention of this court to the article in the "Examiner" of December 17, 1913, found at pages 2322-4 of the transcript. We ask the court, as we think it is our right to ask the court, to read that article, its headings and the body of the article; likewise, we ask the court to read the "Examiner" editorial which follows immediately at pages 2324-5.

Again, we ask this court to read the "Examiner" article of December 18th, found at pages 2326-8.

We ask the court to read the "Examiner" article of December 24, 1913, found at pages 2332-3.

We ask the court to read the "Examiner" article of January 8, 1914, found at pages 2339-2340, in which the statement is made of evidence which the trial judge excluded.

We ask the court to read the "Examiner" article of January 27, 1914, found at pages 2372-4; and of January 31, 1914, in which excluded evidence is again referred to and characterized,—pages 2376-8.

We ask the court to read the "Examiner" article of February 8, 1914, pages 2388-2392.

We ask the court to read the "Examiner" article of February 11, 1914, pages 2393-4.

It is not to be understood that these specified articles were the only "Examiner" publications, but they are sufficiently salient to indicate the atmosphere of prejudice in which Masters had enveloped the defendants.

As to the "Bulletin" articles. These articles begin at page 2403 of the transcript, and we ask the court's attention to the first of them, to its heading, and to its statement, and the manner of statement, touching the charges against these defendants (pp. 2403-4); also, the alleged explanation at pages 2407-9.

We ask the court to read the "Bulletin" article of December 16, 1913, at pages 2413-2414.

We ask the court to read the "Bulletin" article of December 17, 1913, at pages 2416-2418.

We ask the court to read the "Bulletin" article of December 18, 1913, at pages 2419-2420.

We ask the court to read the "Bulletin" article of January 8, 1914, in which a statement is made, among other things, of evidence touching the Japanese line, which the court had excluded (pp. 2427-8).

We ask the court to read the "Bulletin" article of January 13, 1914, at page 2432; and of January 14, 1914, at pages 2434 and 2436; also the Bulletin article of January 21, 1914, (p. 2444); also the "Bulletin" article of January 26, 1914 (pp. 2448-9); also "Bulletin" article of January 27, 1914, (p. 2451).

' We also call the attention of the court to the newspaper article or cartoon, entitled: "Breaking Even: If the Consumers ever get a chance to sell a ton of coal to the Coal Man." This cartoon is part of the record on this writ of error.

The same observation is to be made on the whole course and tenor of the "Bulletin" articles, as in respect to those that appeared in the "Examiner". The consistently and designedly prejudicial, contemptuous, and offensive character of these publications is readily accounted for, when they are traced, as we have traced them, to their immediate source—to those who were with David Powers from the beginning, and who actually reported the proceedings at the trial. We do not believe that the responsible managers of these newspapers, if time had permitted, and they had been aware of the true situation, would have permitted for a moment the columns of their papers to be betrayed to the purposes of Masters and his like. No man of fairness, knowing the case as this record has made it, can read these articles without being shocked. That they were systematically hostile and injurious to these defendants will admit of no doubt.

Juror Bromberger read these "Examiner" articles (pp. 2298-9); so did Juror Long (p. 2303); Juror Stackler read them (p. 2305); also Juror Beans (p. 2309); also Juror Herdman (p. 2302). Maher does not deny that he read these articles, "Examiner" and "Bulletin"—he implies that he did; so, also, of Becker, Gatley and Bolander. And

Juror Herdman makes affidavit in respect to Becker, without any attempt on Becker's part at a denial. Herdman says:

"After the case had been submitted to the jury, and while we were in the jury room, but before we had reached a verdict, Mr. Fred Becker, another of the jurors, said to me: 'Now, Mr. Herdman, I presume that you read the daily papers the same as I do.' And I told him that I read most of them every day" (p. 2303).

Indeed, we are not required to point, as we have done, to the direct evidence that the jury read these articles. In *Meyer against Cadwalader*, 48 Fed. 32, 36—a case of alleged frauds on the treasury, the court said:

"It is idle to say that there is no direct evidence to show that the jury read these articles. They appeared in the daily issues of leading journals, and were scattered broadcast over the community. The jury separated at the close of each session of the court, and it is incredible that, going out into the community, they did not see and read these newspaper publications. *That these published statements were well calculated to prejudice the jury against the plaintiffs and deprive them of a fair trial is a proposition so plain that it would be a sheer waste of time to discuss it.* Good ground, therefore, here appears for setting aside the verdict."

And in *Morse against Montana Company*, 105 Fed. pp. 345, 346, 347, 348, it was said:

"That these articles were written with the view of influencing in some way the determination of this cause is apparent. The publication thereof was commenced very soon after the commencement of the trial of the cause, and ap-

peared in many of the issues of that newspaper until the trial was terminated, when they ceased. The power of the press to create and mold public sentiment is generally recognized, and cannot be doubted. Public and great private enterprises often resort to it for this purpose. The Independent was a leading newspaper at Helena, and possessed a large circulation in the community where nearly all of the jurors in this case resided, pursued their avocations, and conducted their business ventures. *It cannot be doubted* but that a public sentiment was created favorable to the defendant in this community by these articles, and experience has demonstrated that jurors are influenced much by the views of the community wherein they live. *Some of the jurors acknowledge in their affidavits that they read some of these articles, but deny that they were influenced by them, and one states he considered them as advertisements. The fact as to whether or not the jurors read these articles could be established by their affidavits, but as to what influence these articles had upon their action as jurors could not be so established.* In the case of *Mattox v. United States*, 146 U. S. 140, 13 Sup. Ct. 50, 36 L. Ed. 917, the Supreme Court discussed this question. In it the following is quoted with approval from the decision in *Woodward v. Leavitt*, 107 Mass. 453:

‘That on a motion for a new trial on the ground of bias on the part of one of the jurors, the evidence of jurors as to the motives and influences which affected their deliberations is inadmissible, either to impeach or support their verdict,’ and adds: ‘But a juryman may testify to any facts bearing upon the question of the existence of any extraneous influence, although not as to how far that influence operated upon his mind.’

Under this authority *it was not competent for jurors to prove by their affidavits what influence these articles they read had over them, or what motives actuated them in rendering their verdict.* It does not appear what articles the jurors read, but any of the articles from which the above quotations are taken would have had a tendency to influence a juror and make him partial to the defendant. Some of the jurors, in their affidavits, state that they purposely avoided reading the objectionable articles. How, as to most of them, they could have known that they were objectionable, without reading their headlines, or reading a portion of the articles themselves, it is difficult for the court to apprehend. Take, for instance, the editorial article headed, 'Good News for Helena'. How could any one have learned that it had a bearing on the case without reading it partially or entirely?

In the case of *Meyer v. Cadwalader* (C. C.) 49 Fed. 32, where, upon a petition for a new trial, had under consideration, it appeared objectionable articles concerning the case on trial had been published against the plaintiff, the court held that, *as the articles were published in leading newspapers and widely circulated, it would be presumed they had been read by the jury, and it was held that this presented a proper ground for a new trial.*

It should be noted in connection with this case *that the trial lasted for the greater part of two months, and the jury were allowed to separate when not actually in attendance upon the court.*

In the case of *People v. McCoy*, 71 Cal. 395, 12 Pac. 272, it was held:

'That the reading by a juror, during the progress of the trial, of a newspaper containing any matter in connection with the subject-matter of the trial, which would be likely to

influence him in the performance of his duty, is sufficient misconduct to warrant a new trial' ” (pp. 345-6).

It was suggested in the case just cited, that counsel for the prevailing party were privy to the publications. We are not reflecting on counsel in the case at bar, but we give the language of the court as applied to the case from which we have been quoting:

“Considering the circumstances of this case, it would be presumed that counsel for the defendant had knowledge of these publications. Their attention had been called to one of them by one of the attorneys for the plaintiff in open court. Any one who read the daily papers of Helena at that time could hardly escape reading them. That they were written or instigated by persons friendly to the defendant, their contents leave no room to doubt. I would go further, and hold, however, that if it can be established that the verdict of a jury was influenced by any one, even though not a party to the suit, or a relative or friend of such party, it ought not to stand. The verdict of a jury should be the result of its unbiased action. When a jury is influenced by such articles as are presented in this case, it is difficult to prove who instigated them. It is claimed, however, that the plaintiff ought to have had the parties publishing these articles brought into court and punished for contempt, or ought to have applied to the court for a continuance of the cause on account of the prejudice created by them, and by a failure so to do waived the right to present this question upon a petition for a new trial. It was extremely doubtful as to the right of plaintiff to ask that the publishers of this newspaper be brought into court and

examined upon the charge of contempt" (p. 347).

And further:

"To require a party to a suit, when a newspaper publishes an article calculated to prejudice the jury and community against him, to apply to the court for a continuance, or to be deemed to have waived all complaint on account of such publication, would require an act which I think no court would impose. It ought not to be that a newspaper could force a party to continue his cause by a scurrilous attack upon him, and one calculated to bias a jury against him. He might never be as fully prepared for trial again as at that term. And what guaranty would he have that the same tactics would not be again resorted to at the next term? The time, perhaps, has arrived when the courts should say that the dominating and powerful public press should not be used to influence judicial proceedings—to bias its jurors and intimidate its officers" (p. 348).

In *Callahan against Ry. Co.*, 158 Fed., pp. 994, 995, it was said by the court, quoting from an opinion of Mr. Justice Clifford:

"Any improper influence with jurors may afford sufficient ground for granting a new trial, and it is not necessary that the attempt to influence the jurors should be made by one of the parties nor even by his agent. It is sufficient that it clearly appears that it was done in his behalf, *and it is never necessary to show that misconduct controlled or determined the verdict, providing it was of a character that might have had undue influence*" (p. 994).

And further:

"Jurors must be kept free from all possible influences. When exposed thereto it will not do to inquire into the probability of the extent of the influences, and their effect upon the verdict. There is no safety except in setting aside the verdict in a case where acts and conduct are such that could have influenced the verdict" (p 994).

Finally:

"That the improper influence exerted upon these jurors was in the interest of the defendant is not a matter of doubt; and the court will not stop to weigh with exactness the effect of such influence upon this verdict. It is sufficient to know that it was exerted, and that the verdict might have been influenced thereby. It must be understood that no verdict should be permitted to stand, against which, from established facts, the slightest inference rests that it bears the taint of improper influence exerted by or in behalf of the party in whose favor it is returned. Mattox v. United States 146 U. S. 140, 149" (p. 995).

In the Supreme Court of California, 159 Cal. pp. 526, 527, 528 (*People v. Loung*) the court, quoting from Mr. Justice McKee, says:

"There is no doubt, however, that the reading of newspapers by jurors, while engaged in the the trial of a cause is an inattention to duty which ought to be promptly corrected; and if the newspaper contains any matter in connection with the subject-matter of the trial which would be at all likely to influence jurors in the performance of duty, the act would constitute ground for a motion for a new trial. Jurors in a criminal action are sworn to render a true verdict according to the evidence. They can-

not, under the oath which they take, receive impressions from any other source. If it be proved as a fact, or may be presumed as a conclusion of law, that their verdict may have been influenced by information or impressions received from sources outside of the evidence in the case, such a verdict is subject to be set aside on a motion for a new trial" (p. 526).

Quoting from *People against Stokes*, 103 Cal. 196, the court continues:

"It is insisted that a new trial should have been granted, because of misconduct of the jury after they had retired to deliberate upon their verdict. The misconduct charged consisted in the jury reading from a local newspaper an article containing a report of some of the evidence in the case, given at the trial, which included a matter of evidence the court had rejected as inadmissible, and also contained intimations that two of the jurors had been corrupted. The evidence bearing upon the question was given by the officer in charge of the jury. No contrary showing was made by the affidavits of jurors or otherwise. Indeed, conceding that the article was read by them, they could make no showing that would relieve them of the effects of their own misconduct. A juror is not allowed to say: 'I acknowledge the grave misconduct. I received evidence without the presence of the court, but those matters have no influence upon my mind when casting my vote in the jury room'. The law, in its wisdom, does not allow a juror to purge himself in that way" (pp. 526-7).

And finally, quoting from the opinion of Mr. Justice Van Fleet in *People against Leary*, 105 Cal. 490:

“In *People v. Leary*, 105 Cal. 490 (39 Pac. 24), Mr. Justice Van Fleet speaking for the court said (referring to the reading of newspapers by jurors during the progress of a trial): ‘If the matter * * * be such as would from its character, or the manner or connection in which it is stated, be calculated to prejudice or injuriously affect the minds of the jury, a presumption of improper influence arises, and a new trial will be granted, without requiring defendant to show that harm has in fact been done his cause’ ” (p. 528).

IV.

It Was Error for the Special Counsel to Argue the Case to the Jury, on Behalf of the Government, in the Manner to Which Exception Has Been Assigned.

We dislike exceedingly to go into any comment on the very able counsel who represented the government specially at the trial below. The ablest prosecutors will at times be hurried into error through excess of zeal, particularly in a case which took some two months and over to try. But the defendant suffers and is prejudiced all the same. The excerpts from the argument of special counsel will be found, as to the opening argument, at pages 2513-2520; as to the closing argument, at pages 2520-2530.

Lowdon v. United States, 149 Fed. 674, 678, 679;

Hall v. United States, 150 U. S. 76, 81;

Wilson v. United States, 149 U. S. 60, 66-8.

V.

The court erred in refusing to allow the defendants to ask this question on cross-examination of Tidwell:

“Q. Now I ask you, what other matters have you in mind and which you used in that assumption other than these three instances of the ‘Germanicus’ and the ‘Dumbarton’?”

This question and the context in which it was put, will be found at pages 2555-6. Tidwell had instanced the cargoes of these two ships, while testifying concerning the matter of shortage, but had said twice that there were, as well, other matters going to the question of shortage. The very natural question was then put to him by counsel for the defense, as to what those other matters were. This question of shortage was material, Tidwell was the prosecuting witness, and when he made the imputation twice that there were other matters, the defendants were entitled to know what those matters were, and to give such explanation of them as lay in their power.

VI.

The court erred in refusing to allow the defendants to ask this question on cross-examination of Tidwell:

“Q. Then, Mr. Tidwell, do you recall an article appearing in the ‘San Francisco Bulletin’ the day after you commenced this exam-

ination of the books and papers of the Western Fuel Company concerning these books and papers?" (p. 2560).

The defendants were entitled to show that Tidwell, on getting access to the books of the Western Fuel Company, had instigated, without delay, a newspaper article—that went to his animus on cross-examination, and the prosecution cannot avoid responsibility for his conduct.

Morse v. Montana Company, 105 Fed. pp. 346-7.

VII.

The court erred in ruling in the testimony of Freund in the respect assigned for error (pp. 2565-7). Freund had been keeping close watch on the weighing out of the barges, and, on a given occasion, weighed a barge out short. The court, over objection, permitted him to testify that it was sometime after that, some few months, before he got another assignment to weigh draw-back coal. There was neither foundation nor relevancy for the insinuation that the defendants were chargeable with this interval of time between his assignments to the barges; but that was the purpose and that was the insinuation. No such inference, as counsel for defense pointed out, was properly deducible.

VIII.

The court erred in refusing to allow the defendants on the examination of Tidwell, to show

that he had correspondence with respect to the matter of a reward to David Powers (pp. 2590-2592).

The defendants were entitled to probe the relations between the government and David Powers, and any correspondence that Tidwell had upon that subject, was admissible, and it would be material and instructive, and the highest kind of evidence.

IX.

The court erred in refusing to allow the defendants to ask Mr. Mills as to the possibility of the barges overrunning from 20 or 30 to 40 per cent (pp. 2592-3).

The experience of Mills, his competency to answer the question, having been established, the defendants were entitled to his testimony.

Holland v. Zollner, 102 Cal. 633.

It is now submitted that the judgment should be reversed, and that these plaintiffs in error should be given a new trial of the case.

Dated, San Francisco,

October 30, 1915.

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